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CHAPTER I.

SECTION 1.

IN times like our own no subject attracts much attention until circumstances bring out its practical application. Since the beginning of the last century the question of the Royal Supremacy has been in a measure dormant, because it did not bear directly upon any of the controversies of the time, and it had previously been investigated with great learning and research, both by those who desired to limit, and those whose purpose it was to enlarge its extent. At the Reformation it was a topic continually handled, because it was bound up with the whole course of that great movement; not a step could be taken till some power for the redress of wrongs, and the removal of corruptions were substituted in place of that which had a vested interest in well nigh all abuses, and was committed in various ways to their maintenance. Again, in the time of James the First, it was in a measure revived, chiefly by means of the King himself, who delighted in such discussions. After the Revolution of 1688, the Royal Prerogative in

relation to the Church was again closely scrutinized, and with great ability on both sides, the occasion being furnished by the deposition of the non-juring bishops; and the right of the Crown to remove ecclesiastical persons who refused the oath of allegiance was fully debated. If we except the period of what is called the Bangorian Controversy, the question has since excited but little interest, and has been left to vague and traditionary impressions rather than subjected to any re-examination. It would have been for the peace and blessing of the Church, if it might have still slumbered; but this was perhaps hardly to be expected, in an age which is so far from taking any thing for granted, and which occupies itself so much in trying the foundation of all prescriptive claims, and bringing all principles to the test of a searching enquiry. No one could foresee what actual case would furnish occasion for re-opening the question. It has come in a way which was not anticipated, through the decision of an appeal leading to an investigation, not only of the constitution of the court, but the nature and extent also of the authority from which it claims its commission. Whether the appellate jurisdiction necessarily flows from the Supremacy, has been questioned; but it is the point of its apparent application which has brought the opposite parties to join issue. The subject of interest reaches far beyond the case itself which has been heard, undeniably important as it is, and touches the relation of the civil authority to the ec-

clesiastical, which has been more or less in debate since the empire became Christian. It is a broader investigation which is before us than at first seemed to be involved, and yet it is inevitable, if we would not be found fighting in the dark. Though the question can hardly be said to have arisen suddenly, it has taken some of us by surprise and found us unprepared. There is the danger, on the one hand, of asserting claims for the Church which cannot be maintained, and, on the other, of admitting the authority of the supreme civil power on low and inadequate grounds. We may either be betrayed into denying what are, after all, sound and true principles of Church government, or defending them ignorantly, and so bringing them into disesteem. It may not, indeed, be the duty of a particular person to deal with the subject at all; he may decline to reason upon it as lying out of his province, or beyond his opportunity for forming a right judgment. But if we take any part in the controversy, it is a plain duty to spend some pains in mastering its details; and before we commit the measure of influence which we may possess to the issue, we are responsible for using all the means which we can command for coming to a sound conclusion. It will not be enough to adopt, without consideration, the opinion of others; we must judge for ourselves how far they are tenable, on grounds of Scripture and reason, and the precedents derived from the past. We are bound to look to it, that we do not involve ourselves blindly in a

contest without having considered its nature and probable result, or how far the position which we have taken up may turn out to be really defensible. The question is far too deep and important to be settled on any superficial or limited view; the great difficulty consists in reconciling apparently opposite conditions, and no good purpose will be served by attempting to evade it. Nothing would be easier and nothing more unsatisfactory, than to support an extreme opinion by specious argument, as that Church rights are to be upheld without reference to the claims of the civil power; or that secular authority should be so enforced as to make the Church no more than a creation of the State. It is from such one-sided and unbalanced schemes that mischief so often arises. The whole English system, including the relation between the temporality and spirituality, is made up of checks and compensations; the entire working cannot be explained by any single principle. There may be much which at first sight seems conflicting, and not reducible to any theoretical harmony; it has been the growth of time and experience; corrections have been supplied as they became needful; and the result has been, certainly not an ideal perfection, but what, under all circumstances, was the best attainable constitution, and the most agreeable to the practical genius of the people for whose benefit it was designed.

To some of us the question at issue has an importance which can hardly be overrated, because it

concerns the interpretation of an oath, the taking of which is the condition on which we hold office and preferment in the Church. A limitation has been proposed, with a certain weight of authority, which would restrict the Royal Supremacy in ecclesiastical things to that which is external and temporal. Before we admit so great a modification of a solemn engagement by which we have bound ourselves, we may justly require the most undeniable proof of its accuracy. It is indispensable that we should discover the mind and intention of those who composed the declaration in which the nature of the Supremacy is described, and who framed the oath by which the acknowledgment of it is to be made. The *animus imponentis* is to be ascertained ; for the interpretation does not lie with us, nor have we the right of interpolating a qualifying clause, unless it was previously implied. If we entertain any doubt, we cannot be excused from the duty of earnest and patient enquiry. It is a case in which we are especially obliged to take words and phrases in their natural and ordinary sense. If we cannot admit the plain and obvious meaning, subtle distinctions and forced constructions will afford us no relief. We are bound by what the terms themselves express, and if any doubt arise, for which indeed there seems to be but little ground, we may look to other statements and declarations emanating from the same source, as well as to acts by which the intention of the words is made plain. If it turn out that the documents in question express

6 *More than Temporal Power asserted.*

clearly and unambiguously a claim of jurisdiction and government in spiritual things, we need not look any deeper ; as far as our obligation is concerned the question is concluded. But when we find that the measures adopted, and the whole line of conduct pursued by those whose language we have been considering, is in perfect harmony with their words ; that this was the very ground on which their enemies over and over again reproached them ; and that some of those to whom the oath was tendered were willing to suffer the loss of goods and even of life, rather than take it, which would not have been the case, if the restriction now suggested had been known to them, the case becomes as strong as any evidence can make it. Nothing remains for us but to declare our dissent from the proposed interpretation, and to state, in plain and exact terms, why we believe it to be altogether untenable, lest, by our silence, we seem to acquiesce.

But the subject is not one in which the clergy have a sole interest, for whatever relates to the Church touches the spiritual well being of all its members, not only those who are ministers and office bearers, but those also who were anciently called its “secular sons.” The tokens of mutual jealousy are not indeed wanting among us at this time ; the very earnestness with which this question of the Supremacy is handled, on both sides, is an indication of it. And yet nothing could be more injurious to the prosperity of our communion, or more alien from its spirit. Before the

Reformation, the clergy were separated from their fellow subjects by the closer allegiance which they rendered to the Bishop of Rome than to their own Sovereign. The regulars were under his special jurisdiction, as well as bound to him by the preferments which he had to bestow. The reader of English History cannot but have observed many symptoms of the ill will with which they were regarded by the laity, and which broke out into violence as soon as the occasion served. Nothing could tend more effectually to remove mutual suspicion, and to bind together all members of the Church, than the acknowledgment of a government supreme over the whole. We may prove it to be in the highest degree expedient on this ground, as we may show it to be right according to Divine sanction, and the practice of the purest times. It gives an additional interest to the present enquiry, and makes the conclusion at which we may arrive still more important, because the prospect of hearty and affectionate union is so considerably involved. The more thoroughly the clergy and laity can be joined in united effort, the better for the well being and efficiency of the community to which both belong. The vigorous and energetic life of the body is only to be preserved by the harmonious action of all its parts. Ministers of Christ have no privileges separable from the interests of the entire Church, which has other members and other representatives besides themselves. Their office is a ministry and not a lordship. Whatever pro-

perty is assigned to them is a stewardship for the benefit of all, and not a possession for individual enjoyment. If the clergy are secured in the usufruct, the laity have an equally indefeasible right to the spiritual work for which the endowment was given. The ancient maxim is never to be forgotten, “*beneficium datur propter officium*,” for in the latter all have their common interest. And the same holds good in respect to all advantages of station and influence which belong to any of the clergy; they are given for the benefit of the whole body of the faithful, and it is the token of a degenerate and corrupt state, when we are more familiar with notions of dignity and honour, than with those of charge and service. In the words of Bishop Jeremy Taylor, “The ministers of religion are very considerable in this Kingdom of Christ, to promote it, and to advance it by holy preachings and holy ministrations, but it is true which was solemnly declared in Babylon to the prince of the captives, their eminency is nothing but an eminency of service, it is the greatest ministry in the kingdom, but hath in it the least of empire.”* Doubtful and perilous days sometimes re-unite those who have stood aloof from each other in times of security and prosperity. It may be that He who best knows how to heal the divisions and unite the hearts of His people, may bring good out of our present disorders through the sense of a common necessity.

* Works, xiii. p. 489.

It cannot be concealed that a contest is hardly to be avoided, which, end as it may, cannot but produce very injurious effects, and do harm in ways which were at first hardly suspected. We live in a thoughtful and energetic, but at the same time a hard and sceptical age. The spirit of reverence is but low among us, and many things have tended to divert it from the objects to which wise and good men would desire to see it chiefly directed; and there are evil influences at work, partially kept in check, but which only wait the opportunity for further developement. Nothing could be more disastrous than to assert for the Church, claims of independence which were resisted even when its communion embraced the whole nation. The conflict would be very quickly decided, for the opposition raised on all sides would be irresistible; but the ruinous results would be permanent. The peril is one which no wise statesman will overlook, and no sound churchman will needlessly increase. Nothing is more to be desired than that the questions which agitate so many minds should be brought, by authority, to a reasonable and moderate conclusion, and especially that which stands in the foreground the sense and the extent in which the Royal Supremacy is to be acknowledged. Some are lingering in the communion of the Church to see if they may be permitted to express their allegiance with a lower and more limited meaning than has heretofore been held allowable; while others are disquieted by the fear that an influence may be

10 *Parties to whom Consideration is due.*

established unfriendly to the principles which they hold to be scriptural and true. For the sake of both these parties the uncertainty is to be deprecated. The decision may hasten the departure of some from among us, but, little as we can rejoice in their removal, their stay would be purchased too dearly by the continued unsettledness of our present state.

We cannot refuse sympathy to any who suffer for conscience' sake, even when they believe themselves bound by duty to leave the flocks which the Great Shepherd gave them in charge to fold and to feed ; that is to say, if they have come to a deliberate conclusion, and faithfully carried it out at the cost of self-sacrifice, not if they have remained to the last possible moment, to trouble the peace, and to destroy the authority of the Church at whose altars they were still serving. But consideration is also due to those, neither the least learned, nor the least earnest, who are patiently and hopefully working, and to whom the strife and the forecasting of change are their chief hindrances. Above all, we have no right to overlook the case of the multitudes whose faith is shaken, and whose souls are put in peril, by the contests in which they are ignorantly taking part. Their jealousy has been reasonably excited by the revival of pretensions which have been often refuted, and by the clearest arguments ; but it is religion itself which will suffer in the end.

For judging accurately upon the great questions which are before us, there is need of patient enquiry,

Freedom from Danger a Reason for Moderation. 11

by which we may attain information somewhat more accurate than what passes current in popular statements. Rhetorical phrases will do us no good, nor vague generalities, nor appeal to unreasoning prejudices. We must beware of transferring to the sphere of religious controversy, that spirit of agitation which, so far from imitating and using, it becomes us to rebuke both by word and example; it settles nothing and only diminishes the chance of final and satisfactory adjustment. The very consciousness of our security should tend to moderate our tone. We incur no hazard; and the common sense of the age is shocked by the attempt to make our self-assertion and self-will pass for a parallel to the boldness and faithfulness of primitive days. It feels little respect for heroism which has no danger to meet, and for martyrdom which has no suffering to bear. Those truer times were rich in the tokens of still power. Far less was spoken and far more was done and endured, for the sake of Christ and His Church. Our duties are different, but the spirit in which we meet them ought to be the same. Principles which seemed established in our own communion have been called in question; nothing remains for us but to look to the foundations that we may be prepared to defend them worthily. The greatness of the cause in hand should make us avoid personal imputation, and individual disputes; they are impertinent and beside the mark. The crisis calls for the expression of dutiful affection to the English Church,

12 *Views of the Supremacy held by Church Writers.*

as that branch of the Church Catholic to which our allegiance is due ; and of clear outspoken loyalty to the Sovereign, as supreme over us in temporal and spiritual government. If we endeavour to maintain the latter thoroughly, in its due place and proportion, though without impeachment of the former, we shall hardly escape the imputation of Erastianism,* which has long been the favourite accusation against those, who refuse to deny a power which they believe to have been providentially given to princes. We ought not to wonder, when we recollect how much easier it is to use a term of reproach which lies ready to hand, than to construct a logical and availing argument ; the one will be eagerly repeated by many to whom the other would be hardly intelligible ; and we have little cause to complain when we see that the reproach must be shared with the great divines who express, if any can, the mind of the Church ; and they are at one on this question. Jewell and Jeremy Taylor, Hooker and Bramhall, Andrewes and Bilson, speak with the same voice in support of that doctrine of the Royal Supremacy, which some English churchmen are now so earnest in denying. Our enquiries will of necessity lead us to the history and the writings

* It is somewhat remarkable that so little should be known about one whose name has long been used familiarly. Erastus was by profession a physician, and by choice a theologian, but more respectable in the former character than in the latter. It would surprise many of us to find how little his pages contain in support of the opinions which he is supposed to have originated.

of the Reformers, by whom it was unequivocally maintained. The farther our researches lead us into acquaintance with what they did and what they wrote, the more reason shall we find for rejecting the judgment of some, who have laboured to disparage both their attainments and their conduct. They were the great men of a learned age, deeper in their thoughts, and more saintly in their lives, than we dare to esteem ourselves. None but a thankless generation could make light of the obligation which it owes for that defence of the Faith which they sealed with their blood, and for the gift of the service book which is among the regalia of the Church. Those learned and holy men are unanimous in maintaining the Royal authority in ecclesiastical things, not as an invention of their own age, but as the undoubted tradition of the earliest times. We should take a very inadequate measure of the importance of the principles for which they contended, if we were to leave out of sight the power to which it was in their time, and to which it is still, antagonist. The existence of a National Church simply independent is a dream which has never been realized, and in the nature of things cannot be. The supreme authority must be either the ecclesiastical or the civil. There cannot exist in the same nation two imperial powers, separate in their different spheres, and maintaining the relation of equality, because the subjects of the one are the subjects also of the other, and questions continually arise of mixed character, which belong in part

14 *No National Church independent of the State.*

to both jurisdictions, and some of a doubtful kind, the proper place for the hearing of which has to be determined. Throughout the middle ages the struggle of the Church was not for independence, but for dominion. When the advantage had been gained by the empire, the Pope strove for emancipation by aiming at dominion. When the papacy was weak it was subservient, when it grew strong it became dominant. In the time of Adrian I. Charlemagne possessed the power of appointing to all Bishoprics, including the see of Rome ; Adrian IV. compelled Frederick Barbarossa to hold his stirrup, as the condition of receiving the kiss of peace. In the whole line of policy pursued on both sides, there was a practical confession of the necessity for a supreme authority. At one time the Pope claimed to have the right of bestowing temporal sovereignty as dependent on the spiritual ; and now for some centuries his power, over those who acknowledge his headship, has been subjected to the control of the governments under which they are living. There remains one kingdom indeed ruled by ecclesiastics as if for warning, for it is by universal consent the worst administered in Europe. The only theory which is really antagonistic to the scheme of church government held by our divines, is that of the Papal supremacy ; and this may explain the earnestness with which it is inculcated by Roman controversialists. They require its acknowledgment as preliminary and indispensable ; in the words of an accomplished member of that com-

munion,* “ The Coptic, Maronite, and Catholic Armenian Churches, although differing in everything outward from the Church of Rome, are in unity, since they acknowledge her supreme authority. The Anglican Church, even brought back to the most Catholic externals, can never be in unity as long as she denies her legitimate mother.” So again in the case of those who have lately gone from among us, it was the fact of a supreme spiritual government which proved the main attraction, for the sake of which they overlooked a thousand contradictions of scripture and the early church. They knew, as well as ourselves, the history of those fraudulent claims, which began with the use to which the canon of Sardica was applied, and which have been maintained by successive forgeries, the character of which no one now is hardy enough to deny. They are not ignorant of the fictions by which gradually the light of God’s pure truth was hidden, for they have described them in language too eloquent to be forgotten, and have confuted them by evidence too strong to be explained away. But neither the keen conviction of their own minds, nor the unanswered argument of others, could withstand the desire of finding the right of supreme government in an infallible earthly head. And when this claim had once been admitted, all reasoning upon doctrines and practices, however open to the gravest objection, was necessarily closed.

* M. de Montesquieu.

And so it must ever be, for if the Pope were proved to be Christ's Vicar on earth, in the Romish sense, which is impossible, the rest would follow. But no multiplication of acts can cover the original defect of title. They are but assertions, bold and unscrupulous in the highest degree, of that which the Church, in general Councils, has again and again denied; nay, the very meeting of Councils is in itself a contradiction of the claim, for why should they be convened, if questions of discipline or faith can be decided by a supreme judgment elsewhere? It is the demand of independent and uncontrolled spiritual monarchy which is advanced, submitting to limitation indeed through the force of necessity from time to time, but never abandoning its pretensions, and ready to maintain them in the broadest extent when the occasion serves. The claim dates from the false decretals attributed to the Popes of the four first centuries, which, in spite of their reception by the whole Latin Church for nearly 800 years, are so manifestly and undeniably spurious, that not one moderately learned man, as Fleury says, could now be found to maintain their authenticity. The internal evidence against them is overwhelming; and yet they form a main foundation for the Papal assumption of supreme authority. In the words of Gieseler, "They were soon circulated in various collections, appealed to without suspicion in public transactions, and used by the popes, from Nicolaus I. immediately after he had become acquainted with them, without any opposition

being made to their authenticity, and continued in undiminished reputation till the Reformation led to the detection of the cheat. On these false decretals were founded the pretensions of the Popes to universal sway in the Church, while the pretended donatio Constantini M, a fiction of an earlier time, but soon adopted into them, was the first step from which the papacy endeavoured to elevate itself even above the state."

If these high pretensions have ever been withdrawn through stress of circumstances, they are certainly at present revived in their fullest force, and what might seem strange, if other influences were not taken into account, they have engaged in their defence the most earnest minds in the Roman communion. The mitigated and moderate scheme of Bossuet is virtually extinct, and even in the Gallican Church, which was once at the brink of separation on the very question of Papal supremacy, the ultramontane theory has been widely received. It is the Romanism of Gregory the Seventh, and of Innocent the Third, which we have to encounter. We are called upon to admit that the Pope has the promise of personal infallibility, that he is the sole foundation of order and jurisdiction throughout the world, that communion with him is essential to the very existence of a Church, that his decrees overrule the decisions of Councils, and that his courts are the last appeal from all Patriarchs and Metropolitans throughout Christendom.

The Roman system is a stately and imposing struc-

ture, but it rests on the scantiest possible base. The danger is not that it should be permanent, which is of all things the most improbable. The eleventh and twelfth centuries cannot be reproduced in the nineteenth ; there is no sympathy between them, and they cannot make common cause. It is not the perpetuity of papal supremacy which we have to dread, but the recoil by which it will be inevitably followed. The peril which has long occupied the minds of thoughtful men, is the preparation which the extended demands on human credulity are making for a darker and more hopeless infidelity than the world has ever seen before. The subtlest and most prevailing shape which scepticism has taken, is exactly that to which, in the reaction to be anticipated, many minds will be laid open. It professes to afford a refuge in the freedom of the spirit from the bondage of the letter ; rejecting all evidence which comes ab extra, and exaggerating beyond reason the power of discovering truth ab intra, it leads in the end to the disbelief of all revelation, and even the personal existence of God.

It is Romanism in the extreme form which is now advocated, from which these perilous results are likely to spring ; and yet it is in this very form that it proves itself most attractive. And we have not far to seek for the reason. There is a natural liking for what looks united and strong ; but when it also offers an escape from the admission of authority in the civil power over the state ecclesiastical, which some have

The understanding beguiled by the inclination. 19

learned to believe an intolerable bondage, there is an irresistible temptation to overlook all defects of evidence, and all contradictions of historical testimony, for the sake of what seems so great an emancipation. The clearest understanding becomes the dupe of a strong previous desire. The self deception, in some at least, will not be permanent; but when it passes away, the very holding of Faith may be loosened, and the spiritual life itself put in peril. The discovery of the error must be very bitter; and it may come too late. It cannot be a superfluous labour, therefore, to furnish reasons for what is the undoubted doctrine of the English Church in regard to this great question, if it may remove the misgivings of some who are in doubt, or furnish an answer to the objections of others against the Catholic character of our communion, or save any from the awful perils of an unsettled belief.

It is the object of this treatise to prove that the ecclesiastical power claimed by our princes is no more than belongs by right and immemorial custom to the Crown; and that the particular applications of it which have been the subjects of protest, namely, the appellate jurisdiction in spiritual causes, the restraint of Synods, and the appointment of Bishops, are in harmony with recognized Church principles, with ancient precedents, and with the facts of our own history.

SECTION 2.

WE have to ascertain, in the first place, by authentic documents, what is the nature of the Royal Supremacy as known to English law ; how far the extent which is assigned to it may be reconcileable with ancient precedents, and with sound principles, must be a subsequent enquiry.

In the 37th Article, which is binding on the clergy by their subscription, it is declared, that “the Queen’s Majesty hath the chief power in this realm of England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction.”

By the 1st Canon it is ordained that all persons having cure of souls, shall, “without any colour or dissimulation,” declare and teach, four times a year, “that the Queen’s power within her realms of England, Scotland, and Ireland, and all other her dominions and countries, is the highest power under God ; to whom all men, as well inhabitants, as born within the same, do by God’s laws owe most loyalty and obedience, afore and above all other powers and potentates in the earth.”

By the 2nd, sentence of excommunication is pronounced against all persons who shall hereafter affirm that the Queen’s Majesty hath not the same authority

in causes ecclesiastical, that the godly kings had amongst the Jews and Christian emperors of the primitive Church; or impeach any part of his Regal Supremacy in the said laws of this realm therein established.

By the 37th, it is appointed that “none shall be permitted to preach, read, lecture, catechise, or minister the sacraments, or to execute any other ecclesiastical function, by what authority soever he be thereunto admitted, unless he first consent and subscribe to the three articles before mentioned,” of which articles the following is the first: “That the Queen’s Majesty, under God, is the only supreme Governor of this realm, and of all other her Highness’s dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within her Majesty’s said realms, dominions, and countries.”

By the 55th all preachers are enjoined to move the people to pray for the Queen as supreme Governor in these her realms, and all other her dominions and countries, over all persons, in all causes, as well ecclesiastical as temporal.”

By the injunctions of Queen Elizabeth, to which reference is made, 5 Eliz. c. 1. s. 14. as well as in Article 37, it is declared, “That the Queen neither doth nor will challenge any authority but such as

was of ancient time due to the Imperial Crown of this realm, that is, under God, to have the sovereignty and rule over all manner of persons born within these her realms, dominions, and countries of what estates, either ecclesiastical or temporal soever they be, so that no other foreign power shall, or ought to have, any superiority over them."

In the first year of Queen Elizabeth an act was passed for restoring to the Crown the ancient jurisdiction over the state ecclesiastical, and for abolishing all foreign power repugnant to the same. By this act "such jurisdictions, privileges, superiorities, and pre-eminences, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be exercised or used, for the visitation of the ecclesiastical state and persons, and for reformation, order and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts and enormities, shall for ever, by authority of this present parliament, be united and annexed to the Imperial Crown of this realm." The statute law does not, of course, bind the conscience in the same way as the terms of an oath, and yet we may very properly refer to the act which explains so clearly the sense in which the Supremacy was understood, and which was evidently the form on which the first article in the 36th Canon was framed. In these various declarations it was intended, at the outset, to deny the supremacy of the bishop of Rome. This was a requisite preliminary,

since it was by repudiating an usurped authority that the way was to be cleared for the maintenance of the true. The commencement of the change was made some years before the time of Elizabeth. A renunciation of the Pope's authority, which was as full and complete as words could be framed to express, had been made in the reign of Henry the Eighth, when the nation was at one with the King in carrying out and embodying in a formal act the opinions which had long been familiarly entertained. More and Fisher indeed dissented, but there was general unanimity in refusing obedience to the Pope. Even Gardiner, in his book *De verâ obedientiâ*, to which Bonner wrote a preface, says expressly, "all sorts of people are agreed with us upon this point with most steadfast consent, that no manner of person bred or brought up in England hath ought to do with Rome." Gardiner's subsequent retraction does not destroy the value of the testimony which he bore to the popular feeling, which was all but universal. The convocation of Canterbury and York agreed in declaring, that by the word of God the Pope hath no more jurisdiction in England than any other Bishop; and declarations to the same effect were made by chapters, monasteries, colleges and hospitals. But we should very much mistake the legislation of this period if we were to ascribe to it a negative character, that is, if we were to consider its intention to be the denial of an unfounded claim, rather than the assertion of a right inherent in the English Crown.

The resistance which had been so generally offered to the former was preparatory to maintaining the latter; and we find the Royal Supremacy in things ecclesiastical, supported as strongly, and by the same persons as the repudiation of the Pope's jurisdiction. It was under Archbishop Warham, and with the concurrence of Roman Catholic prelates, that the title of Supreme Head was given to the King.

In the reign of Elizabeth, the work of reformation, which had been interrupted for a time, was resumed, and with more earnestness, because the principles, which were now put solemnly on trial, had been in the interval shaped into acts which brought shame upon human nature itself. The feebleness of the arguments used by some, who had been the most active in those dark and bitter days, contrasted strangely with their former arrogance, and tended in a measure to confirm the people in the maintenance of the reformed faith. They were no longer restrained by the fiction of a foreign claim on their obedience, and being free to examine the infinite corruptions with which it was bound up, as well as to listen unrebuked to the voice of Scripture and the early Church, they accepted with a glad and willing mind the supreme authority of their Sovereign. As the claim of papal infallibility had been used to protect doctrine and practice which upon examination were now rejected, so the discovery of the many frauds by which they had been supported, tended to produce a still more settled alienation from the jurisdiction of Rome. That

the English Church should be independent at once of the Pope and the Queen does not seem to have occurred to any of the learned and pious men who were the chief movers in the change. In the time of Edward the Sixth, when the influence of Cranmer was paramount, and when the motives which are alleged to have influenced him in the former reign could have no place, we find it set down in a statute that "Authority of jurisdiction, spiritual and temporal, is derived and deducted from the King's Majesty, as Supreme Head of these Churches and realms of England and Ireland, and so justly acknowledged by the clergy of the said realms, that all courts ecclesiastical within the said two realms be kept by no other person or authority, either foreign or within this realm, but by the authority of his most excellent Majesty." 1 Ed. VI. c. 2. The act 1 Elizabeth c. 1. is entitled "An act to restore to the crown the ancient jurisdiction over the state ecclesiastical and spiritual, and abolishing all foreign powers repugnant to the same."

In 1562 another act was passed "For the assurance of the Queen's royal power over all estates and subjects within her dominions."

It is true that Elizabeth rejected the title of Head of the Church which her father had assumed, but she retained all the authority which the name implied. Jewel refers to the circumstance in a letter to Bullinger, dated May 22nd, 1559. "The Queen is unwilling to be addressed, either by word of mouth

or in writing, as the Head of the Church of England. For she seriously maintains that this honour is due to Christ alone, and cannot belong to any human being soever." And again, May 25, 1559, "The Queen is not willing to be called the Head of the Church of England, although this title has been offered her, but she willingly accepts the title of Governor, which amounts to the same thing."*

In 37 Henry VIII. it is said that "Archbishops and Bishops have no manner of jurisdiction ecclesiastical but by under and from the royal authority." In the Necessary Erudition we read in respect to the power of kings, that "to them specially and principally, it pertaineth to defend the Faith of Christ and his religion, to conserve and maintain the true doctrine of Christ, and all such as be true preachers and setters forth thereof; and to abolish abuses, heresies, and idolatries, and to punish with corporal pains such as of malice be the occasion of the same. And finally to oversee and cause that the said Bishops and Priests do execute their pastoral office truly and faithfully, and specially in these points, which by Christ and his apostles was given and committed to them; and in case they shall be negligent in any part thereof, or would not diligently execute the same, to cause them to redouble and supply their lack: and if they obstinately withstand their Prince's kind monition, and will not amend their faults, then

* Zurich Letters, pp. 29. 33.

and in such case to put others in their rooms and places. And God hath also commanded the said Bishops and Priests to obey with all humbleness and reverence, both Kings, and Princes, and Governors, and all their laws; not being contrary to the laws of God, whatsoever they be: and that not only propter iram, but also propter conscientiam, that is to say, not only for fear of punishment, but also for discharge of conscience.”

In the *Reformatio legum*, which although it never had the force of law, may be taken to indicate the prevailing judgment of the time, we read, “*Rex tàm in Archiepiscopos, Episcopos, Clericos, et alios ministros quàm in laicos infra sua regna et dominia plerissimam jurisdictionem tàm civilem quam ecclesiasticam habet et exercere potest; cum omnis jurisdictio et ecclesiastica et secularis ab eo tanquam ex uno et eodem fonte derivatur.*”

The extent to which the Royal Supremacy was carried by law is the only point with which we have to deal at present. We need not cite farther instances from the reigns of Henry the Eighth and Edward the Sixth, because it was at that time confessedly very great. But whatever powers were lodged in the crown before the accession of Mary, were revived by the first parliament of her successor, and as extensively applied. If any doubt could reasonably arise on this head, it would be removed by comparing the instances in which they were put in force during her reign with those which occurred at

an earlier period. Henry the Eighth granted a commission to Cromwell, which Bishop Burnet is mistaken in supposing to be no longer in existence, and conveyed by it the power to exercise supreme authority in visitation, and discipline, over Archbishops and Bishops, all cathedrals, religious houses, &c. either in person, or by commissioners of his own appointment.* In the first year of her reign Elizabeth granted a commission for similar purposes to certain persons, among whom we find that only one ecclesiastic was named. There is the same assertion of Supremacy, “*Nos igitur regalis et absolutæ potestatis nostræ, nobis in hoc regno commissæ, respectu, quoniam utrumque Regni nostri statum tam ecclesiasticum quam laicum visitare, et certas pietatis ac virtutis regulas illis præscribere constituimus, &c.*” The power extended to the punishment of persons either immoral or recusant: “*condignis pœnis etiam usque ad beneficiorum, dignitatum, sive officiorum suorum privationem,*” &c. and again, “*tam per censuras ecclesiasticas, quam personarum apprehensionem et incarcerationem, &c.*” It reached to the visitation of cathedrals and dioceses, with authority for the deprivation of delinquents, the substitution of other persons, the licensing of preachers, &c. and it included the same power of delegation.

In the year 1575, when the House of Commons petitioned the Queen concerning reformation of dis-

* Collier, II. Rec. p. 21. Burnet, II. Rec. p. 350.

cipline in the Church, in order to proceed in a parliamentary way, her Majesty's answer was that she had already had conference with some of the Bishops about it, and had given them in charge to see due reformation. And that if they should neglect or omit their duties, her Majesty by her supreme power and authority over the Church of England would speedily see such good redress therein as might satisfy the expectation of her loving subjects.* In the sixteenth century, the limitation which would restrict the exercise of the Supremacy to temporal things was certainly unknown, and in the seventeenth, we find Bishop Jeremy Taylor laying it down as an admitted rule that "the supreme civil power hath jurisdiction in causes not only ecclesiastical but internal and spiritual."† And again, "the sum is this, if Christ by His Kingly power, governs His Church, and Christian kings are His deputies, then they also are the supreme under Christ of the whole government of the Church."‡ The very mention of "godly princes" in the thirty-seventh article, implies that they possessed something more than mere temporal jurisdiction over ecclesiastical persons, which would be rightfully exercised over all their subjects by princes whether Christian or heathen.

* Gibson, Cod. pref. 21.

† Works, xiii. p. 530.

‡ Ibid. p. 490.

SECTION 3.

BUT the power which belongs to the crown in ecclesiastical causes, although undoubtedly very great and extensive, is not arbitrary, but according to law ; regulating rather than constructing, rectifying errors and correcting abuses. Its business is not to legislate but to administer by constitutional authority, and according to the forms and precedents proper to the subject matter ; overseeing the Courts Christian, which have the original cognizance of spiritual suits, and affording them an appeal in the last resort, but always legally and according to recognized rules. The question is not how far the autocratic disposition of any sovereign may have prevailed on any particular occasion, but how much authority has been given by the constitution, and formally acknowledged by the Church. Queen Elizabeth may have carried the prerogative too far when she gave power to commissioners to inflict ecclesiastical censures, or James the First, when he revised the service book without consulting convocation. But these are exceptional cases, and have not been drawn into precedent. Nor are the obiter dicta of any person to be taken for authority, or as having committed the Church.

The act (1 Elizabeth 1) which annexes such large powers for visitation and correction, adds (sect. 36), that those who are put in commission “ shall not in any wise have authority or power to order, determine,

or adjudge any matter or cause to be heresy, but only such as heretofore have been determined, ordered, or adjudged to be heresy, by the authority of the Canonical Scriptures, or by the first four general councils, or any of them, or by any other council whereby the same was declared heresy by the express and plain words of the said Canonical Scriptures, or such as hereafter shall be ordered, judged, or determined to be heresy by the high court of Parliament of this realm, with the assent of the clergy in their Convocation."

We shall hardly understand the amount of what was claimed on the one side, or what was yielded on the other, unless we keep in mind the distinctions which were then well known, but with which we have since been less familiar. "Habitual jurisdiction," says Archbishop Bramhall,* "is derived only by ordination. Actual jurisdiction is a right to exercise that habit, arising from the lawful application of the matter or subject. In this matter the lay-patron, and much more the sovereign prince, have their respective interests and concurrence. Dioceses and parishes were not of Divine but human institution; and the same persons were born subjects before they were made Christians. The ordinary gives a schoolmaster a license or habitual power to teach, but it is the parents of the children who apply or subtract the matter, and furnish him with scholars,

* Works, ii. p. 129.

or afford him a fit subject whereupon to exercise this habitual power. Secondly, we must also distinguish between the interior and exterior court, between the court of conscience and the court of the Church. For in both these courts the power of the keys hath place, but not in both after the same manner. That power which is exercised in the court of conscience, for binding and loosing of sins, is solely from ordination. But that power which is exercised in the court of the Church, is partly from the sovereign magistrate; especially in England, where ecclesiastical jurisdiction is enlarged and fortified with a coercive power, and the bounds thereof have been much dilated by the favour and piety of Christian princes, by whom many causes have been made of ecclesiastical cognizance which formerly were not, and from whom the coercive or compulsory power of summoning the king's subjects by processes and citations was derived." Again,* "We must know, that in bishops there is a threefold power; the first of Order, the second of Interior Jurisdiction, the third of Exterior Jurisdiction. The first is referred to the consecrating and administering of the sacraments; the second to the regiment of Christians in the interior court of conscience; the third to the regiment of Christian people in the exterior court of the Church." And again,† "The third power of bishops is the power of exterior jurisdiction in the court of

* Bramhall, Works, ii. p. 453.

† P. 455.

the Church, whereby men are compelled against their wills by exterior means. This the apostles had not from Christ, nor their successors from them ; neither did Christ ever assume any such power to Himself in the word ;—" My kingdom is not of this world," and, " Man, who made Me a judge or divider over you ?" " There is no question," says Stillingfleet,* " but since the acts for restoring jurisdiction to the crown, the supreme jurisdiction both in the ecclesiastical and civil courts, is derived from the crown. And in whose soever names the courts are kept, the authority of keeping them is from the king. For it is declared by parliament, 1 Eliz. 1. 17. that all ecclesiastical power is united and annexed to the imperial crown of this realm ; which all bishops do own, in taking the oath of supremacy." In another place he says,† " In the bishops' ordinary jurisdiction these things are to be distinguished. 1. The original right belonging to his office ; which we do not pretend to be derived from the crown ; but from the fountain of spiritual jurisdiction, the Founder and Head of the Church. 2. The authority to execute such a jurisdiction within the realm, and the rules and measures of doing it ; and this is derived from the laws of the land ; which have given such authority and fixed those bounds ; and therefore to transgress them is an offence against the crown and royal dignity."

* Eccles. cases, ii. p. 110.

† P. 51.

34 *Commissions of Bonner and Cranmer.*

“By the Supremacy,”* said Bishop Andrewes, “we do not attribute to the king the power of the keys or ecclesiastical censures.” So Mason speaks,† “The king’s Supremacy in ecclesiastical matters doth not imply the power of the keys which the king hath not; but he may command those who have them to use them rightly.” It is quite true as Lord Coke affirms‡ that “those who have spiritual jurisdiction as archbishops, bishops, deans and others are the king’s judges within his realm,” but this jurisdiction in *foro externo* does not interfere with the power committed to them of dealing with men’s souls in *foro interiori*. The distinction was very familiar to those who took the chief part in the English reformation. Nowhere for instance is the extent of the royal supremacy more broadly laid down than in the commission which was issued to Bonner in the reign of Henry VIII. for the exercise of his episcopal functions, and the terms are repeated, *mutatis mutandis*, in that which was taken out by Cranmer in the reign of Edward the VI. “*Quandoquidem omnis juris dicendi auctoritas atque etiam jurisdictio omnimodo, tam illa quæ ecclesiastica dicitur, quam secularis, a regia potestate velut a supremo capite, ac omnium magistratuum infra Regnum nostrum, fonte et scaturagine primitus emanaverit, &c.;*” and

* *Tortura torti*, p. 28.

† *De Minist. Ang.* p. 271, quoted by Stillingfleet.

‡ *Inst.* iv. 321.

yet this did not prevent the acknowledgment of an authority derived elsewhere. Jurisdiction was given to the bishop as the form declares, “per et ultra ea quæ tibi ex Sacris Literis divinitus commissa esse dignoscuntur.”* It has been often affirmed by Romanists that our Reformers, in their over-readiness to comply with the demands of state policy, gave up all that was spiritual and of divine origin in the office of the clergy, and the assertion has been taken on trust by many who were bound to examine for themselves. We may well be pardoned if we hesitate to admit such an accusation against the great and holy men, whose memory our church cherishes with deep and respectful affection. It would imply both ignorance of christian antiquity, and the want of boldness in maintaining truth. But no one can believe them to have been unlearned, who is familiar with the Apology, or who remembers Ridley’s defence maintained under all conceivable disadvantages. No one can think them timid or unconscientious, who recalls the extremity of pain which they endured in support of their opinions. There are two remarkable papers extant in which their own words furnish ample vindication. The one, which has the signature of Cranmer and seven others, is entitled “The Judgment of some Bishops concerning the King’s Supremacy,” and is as follows : † “The words of St. John in his 20th Chap. Sicut misit me Pater, et ego mitto vos,

* Burnet II. Rec. p. 90.

† Ibid. I. Rec. 177.

&c. have no respect to a king's or a prince's power, but only to show how that the ministers of the Word of God, chosen and sent for that intent, are the messengers of Christ, to teach the truth of his Gospel, and to loose and bind sin, &c. as Christ was the messenger of his Father. The words also of St. Paul, in the 20th Chap. of the Acts; *Attendite vobis, et universo gregi, in qua vos Spiritus Sanctus posuit episcopos, regere ecclesiam Dei*, were spoken to the Bishops and priests, to be diligent pastors of the people, both to teach them diligently, and also to be circumspect, that false preachers should not seduce the people, as followeth immediately after in the same place. Other places of Scripture declare the highness and excellency of Christian princes' authority and power; the which, of a truth is most high, for he hath power and charge generally over all, as well Bishops, and priests, as other. The Bishops and priests have charge of souls within their own cures, power to minister Sacraments, and to teach the Word of God; to the which Word of God Christian princes knowledge themselves subject; and in case the Bishops be negligent, it is the Christian princes' office to see them do their duty." The other is called "A declaration made of the functions and Divine institution of Bishops and priests." The following are extracts from the paper which runs to some length, and is signed by Cromwell, Cranmer, and many others.* "Christ and His Apostles did

* Burnet 1. Rec. 321.

institute and ordain in the New Testament, that besides the Civil powers and Governance of Kings and princes, which is called in Scripture, *potestas gladii*, the power of the sword, there should be also continually in the Church Militant, certain other ministers or officers, which should have Spiritual power, authority and commission under Christ, to preach and teach the Word of God, unto His people, and to dispense and administer the Sacraments of God unto them ;” “ Item, that this office, this ministration, this power and authority is no tyrannical power, having no certain laws or limits, within the which it ought to be contained, nor yet none absolute power, but it is a moderate power, subject, determined, and restrained unto those certain limits and ends for the which the same was appointed by God’s ordinance ; which, as was said before, is only to administer and distribute unto the members of Christ’s Mystical Body, spiritual and everlasting things ; that is to say, the pure and heavenly doctrine of Christ’s Gospel, and the graces conferred in His Sacraments : and therefore this said power and administration is called in some places of Scripture, *Donum et Gratia*, a gift and a grace ; in some places it is called *Claves*, sive *potestas Clavium*, that is to say, the keys, or the power of the keys, whereby is signified a certain limited office restrained unto the execution of a special function or ministration, according to the saying of St. Paul in the first chap. of his Epistle to the Romans, and in the fourth chap. of his Epistle to Timothy, and also in the fourth chap. of his Epistle

to the Ephesians.” “ Item, That this power, office and administration is necessary to be preserved here in Earth for three special and principal causes. First, for that it is the commandment of God it should be so, as it appeareth in sundry places in Scripture. Secondly, for that God hath instituted and ordained none other ordinary mean or instrument, whereby He will make us partakers of the reconciliation which is by Christ, and confer and give the Graces of His Holy Spirit unto us, and make us the right Inheritors of everlasting life, there to reign with Him for ever in Glory, but only His Word and Sacraments; and therefore the office and power to minister the said word and sacraments, may in no wise be suffered to perish, or to be abolished, according to the saying of St. Paul, Quomodo credent in eum de quo non audierunt? quomodo autem audient sine prædicante? quomodo autem prædicabunt nisi missi fuerint? sicut scriptum est, quam speciosi super montes pedes Evangelizantium pacem, annunciantium bona! Thirdly, Because the said power and office or function hath annexed unto it assuredly promises of excellent and inestimable things; for thereby is conferred and given the Holy Ghost with all His graces, and finally our justification and everlasting life, according to the saying of St. Paul, Non me pudet Evangelii Jesu Christi, potentia siquidem est Dei ad salutem omni credenti; that is to say, I am not ashamed of the room and office which I have given unto me by Christ, to preach his Gospel, for it is the power of

God, that is to say, the elect organ or instrument ordained by God and endued with such virtue and efficacy, that it is able to give and minister effectually everlasting Life unto all those that will believe, and obey unto the same.

Item, That this office, this power and authority, was committed and given by Christ and His Apostles unto certain persons only, that is to say, unto priests and Bishops, whom they did elect, call, and admit thereunto by their prayers and imposition of their hands."

With the power of order the royal authority in ecclesiastical things does not in any way interfere. It was not the office of bishop which was bestowed by the act of the civil power, but the license to execute it, by giving jurisdiction within certain appointed places, and the distinction is very important. Parker was consecrated in 1559, and others after him, with such observance of canonical rules that their consecration cannot, with any reason, be called in question, as it has been proved over and over again. The statute 8 Eliz. c. 1, was passed for removing doubts and for giving assurance that it was duly performed. It is called "an act declaring the making and consecrating of the Archbishops and Bishops of this realm to be good and lawful and perfect." The functions of the clergy to which they are appointed by ordination are not touched by any jurisdiction claimed by the crown. In the words of the 37th article "we give not to our Princes the minis-

tering either of God's Word or of the Sacraments, the which thing the injunctions also lately set forth by Elizabeth our Queen do most plainly testify." But it is not needful to dwell on this point, because whatever might have once been the case, no question is raised upon it at present.

SECTION 4.

WITHIN its prescribed limits, the reach of the Supremacy is universal; it is "over all persons in all causes," and these are by no means words of course or superfluous, but they have a particular significancy, for they constitute the authoritative denial of the exemptions claimed by the clergy, which formed the subject of dispute for several ages, and which could only be met by a broad and absolute assertion of a general jurisdiction. The separation between the civil and ecclesiastical courts was made by William the Conqueror, for what reason it would not be easy to determine, unless it were his purpose to bring the lay courts and the common law into disrepute, by withdrawing from them the ablest and most learned of the judges; this effect certainly followed the change. His mandate, to which Sir H. Spelman assigns the date of 1085, forbids bishops and archdeacons to hold plea in the hundred, or to bring spiritual causes before the secular judicature, and commands that they should be determined in a separate place and according to episcopal laws.* Under Henry the First

* Spelman, ii. p. 14.

the union of the two judicatures which prevailed before the Conquest was revived, and the laws of Edward the Confessor were for a time restored under the joint administration of the clergy and laity, but this lasted only until the reign of Stephen, who being greatly dependent on the clergy, consented to promise by oath that ecclesiastical causes and persons should be judged only by the bishops. That the clergy were independent of the civil magistrate had been very early asserted. Great immunities had been granted by the Christian Emperors, but they extended only to ecclesiastical causes. Bingham notices a remarkable fraud by which the limiting clause of the Theodosian code, "*quantum ad causas ecclesiasticas tamen pertinet*" was omitted by those who desired to extend the privilege.* Justinian made a distinction between ecclesiastical and civil offences, reserving the former for the judgment of the Church courts, and leaving the latter to the cognizance of the civil power.† This distinction was gradually abolished, and all offences of the clergy were tried in the Bishop's court alone. It became a maxim of the canonists, "*sacerdotes a regibus honorandi sunt, non judicandi*," or as it was more expressly set forth, "*in criminalibus causis in nullo casu ab aliquo quam ab ecclesiastico iudice condemnari, etiamsi consuetudo regia habeat, ut fures a iudicibus sæcularibus judicentur*."‡ And again, "*Laicis super ecclesiis*,

* Antiq. B. v. c. 2, s. 8.

† Nov. 83, 1.

‡ Decret. lib. i, tit. 1.

et ecclesiasticis personis nulla sit attributa facultas, quos obsequendi manet necessitas, non imperandi auctoritas.”* The privilege of the clergy which was by degrees extended to almost all crimes, and made to include all the subordinate officers of the Church, even laymen, was generally pleaded after conviction in arrest of judgment, when the delinquent was delivered to the ordinary, to be dealt with according to the ecclesiastical canon. A purgation, as it was termed, was appointed before the Bishop or his deputy, when the accused was called upon to make an oath of innocence, then twelve compurgators that they believed him to speak the truth ; then witnesses were to be examined on behalf of the accused, after which the jury were to bring in their verdict on oath. And all this might take place after the clearest conviction on evidence adduced before the secular court. The temptation to perjury was so great, and the acquittal of persons notoriously guilty was so frequent, that in heinous cases when the guilt was beyond doubt, the temporal courts would not leave the trial of the offender to the ordinary, but delivered him over *absque purgatione faciendâ*, under which circumstances the convicted clerk could not make purgation, but was to remain in prison, and be incapable of holding property unless the king should be pleased to pardon him.† As courts Christian were restrained by the canons from inflicting the punishment of death, clergy-

* Decret. lib. i. tit. 10.

† Blackstone, iv. c. 28.

Exemptions of the Clergy defended by Becket. 43

men found guilty even of murder were only sentenced to imprisonment with hard fare in a monastery, and from this punishment we may conclude that they frequently escaped, since it was found necessary to pass a statute (23d Henry VIII. c. 11, by which it was enacted that if any clerk convict, being in prison of any ordinary, wilfully break the said prison, and escape his way out of the same, that then every such breaking of prison and escape shall be from henceforth deemed and adjudged felony.”* The effect of this comparative impunity was so injurious that, as William of Newbery informs us, not less than a hundred homicides were believed to have been committed by clergymen during the first ten years of Henry II. The disputes which lasted so long between Becket and the King, had their origin in the attempt of the Archbishop to shelter from the jurisdiction of the secular courts certain clerks who had been guilty of atrocious crimes.† Nothing could be more reasonable, or more justified by facts than the purpose of restraining by the articles of Clarendon the privileges which had been so greatly abused, though the death of Becket by the hands of violent men prevented it from taking effect: We may well question his claim to the honours which his memory received, yet we read in a constitution of Archbishop Arundel, as late as 1398, “It is fit that with our loudest voices and peculiar praises and spiritual honours we should

* Statutes at Large, iv. 141.

† Collier, i. p. 350.

extol, sound forth, and venerate the most glorious bishop and martyr, St. Thomas, the patron of us, and of the church which is the head and mistress of all the churches of the said province, who is known to have shed his blood for the ecclesiastical liberty, and by whose merits and passion our whole province of Canterbury is made to shine, and the Church universal is decorated.”* In 1261 Archbishop Boniface, who was uncle to Eleanor the Queen of Henry III., published constitutions of unusual arrogance; The following passage, which occurs in the first, is a specimen of the tone which pervades the whole. “If our Lord the King having been sufficiently admonished, or any other secular power, yet do not revoke the attachments, let the Bishop who has been distressed, put the streets, vills and castles, which our Lord the King, or other secular power holds within his Bishoprick under an ecclesiastical interdict. And if the King, or other secular potentate persist in his hardness, let other fellow-bishops resent such a distress as committed in common upon them all, and as a public injury to the church, and lay the cities, demesnes, burroughs, castles, and vills of the King himself, or of the other power being within their bishopricks, under an ecclesiastical interdict by authority of this present council.” In the fifth we read as follows, “It sometimes happens, that clerks, without respect of persons, without licence of the prelates,

* Johnson’s Canons, sub ann.

are seized as malefactors, or suspected of some crime, or personal injury by a lay power, and thrust into gaol, and not surrendered to their ordinaries upon demand, to be tried freely according to the causes, although they were not caught in the fact nor convicted : And if clerks who are charged with crimes do not appear upon a summons from a secular judge, they are banished out of the kingdom : Now because ecclesiastical liberty is confounded, when a clerk is judged by a layman, we ordain, that, if the clerks so taken be well known and honest, they who take and detain them, and refuse to surrender them at the demand of their ordinaries, be publicly denounced excommunicate by the ordinaries of the place.” And again in the seventeenth, “ Sometimes when ecclesiastical prelates do, as they ought by their office, enquire into the manners, sins, and excesses of their subjects, our Lord the King, and other great men, secular powers, and soldiers obstruct their proceedings by forbidding laymen to take an oath for speaking the truth at the command of their fathers, and spiritual prelates, to whom they ought to disclose their wounds that they may be cured : And sometimes they do not permit the said prelates to impose corporal, or pecuniary punishment on their subjects for their faults and excesses in cases ecclesiastical, according to the canonical sanctions, in proportion to the crimes of the offenders, &c. We therefore ordain that laymen be compelled, particularly by the sentence of excommunication, to take such oath, and

to perform such penalties, whether corporal or pecuniary, as are canonically inflicted on them by their prelates, and that they who hinder them from taking such oaths, and performing such penalties be coerced by the sentences of interdict and excommunication. And if distresses are made upon prelates upon this account, let the distressors be proceeded against by the punishments before prescribed."* Of these canons Lord Coke says, that " notwithstanding the greatness of Boniface yet the judges proceeded according to the laws of the realm; and still kept, though with great difficulty, the ecclesiastical courts within their just and proper limits."†

In 1281, Archbishop Peckham, in a letter addressed to Edward the First, claimed for the clergy exemption from all jurisdictions except that of the prelates, on the ground that the privilege was conceded by Constantine to the church, which was a very old fiction, and, as might have been expected, found its way into that great receptacle of spurious documents, the decretum of Gratian. Two years before, the same Archbishop, in a council held at Reading, pronounced excommunication against all who " should obtain letters from a lay court to obstruct ecclesiastics in such causes as by the sacred canons belong to the ecclesiastical court."‡ But so far was this from being suffered to have the weight of law, that the

* Johnson's Canons. † 2 Inst. 599.

‡ Johnson's Canons, II. sub. ann.

Exemptions of the Clergy finally taken away. 47

Archbishop was summoned before the King in council, and compelled to retract this, as well as some other decrees which touched the Royal Prerogative.

In 1275, a statute had been made, by which some limitation of the privilege of the clergy was introduced. Sir Edward Coke observes, “ That before this act, if any clerk had been arrested for the death of a man, or any other felony, and the ordinary did demand him before the secular judge, he was to be delivered without any inquisition to be made of the crime. But after this statute, when any clerk was indicted of any felony, and refused to answer to the felony upon the score of his clerkship, and was demanded by his ordinary, in this case, before he was delivered to the ordinary, an inquisition was taken whether he were guilty of the fact or not ; and if he were found guilty, his goods and chattels were forfeited, and his lands seized into the hands of the King.” But the privilege was still very great, for if the accused cleared himself by the customary forms of purgation, the King, at the information of the ordinary, was bound to restore his goods. And thus the statute left the judgment of the offence to the Diocesan, which continued to be the case till the 18 Eliz. c. 7. enacted that no man allowed his clergy should be committed to the Bishop.* The exemption of causes produced as much evil as the privilege of persons. The ecclesiastical courts had drawn to

* Collier, I. 478.

themselves suits with which they had no natural connection, such as those which concerned contracts, wills, dower, usury, &c. besides the large number of those which were said to be instituted *pro salute animæ*, and when we remember that the judges in these courts were not of the King's appointment, and that the appeals from their decisions were carried to Rome, we perceive how needful the assertion of Royal authority had become. There had been some restraint of the spiritual courts indeed by the interference of the King's Bench, though before the Reformation this was the subject of complaint and resistance; and yet, if this protection had not been afforded, we can scarcely doubt that all causes would have been drawn to ecclesiastical cognizance, and that the temporal judges would have had hardly any other character than that of instruments to enforce the finding of the ecclesiastical courts. This remedy was furnished by prohibition, which is a writ directed to the judge and parties to a suit in an inferior court, commanding them to cease from prosecuting it, on the ground that the cause belongs to a different jurisdiction, and is granted either at once, or after argument on the aggrieved party complaining of being drawn *ad aliud examen*.* If the proceedings are not stayed by the parties in question, they incur the penalty of contempt at the discretion of the superior court from which the prohibition issued. It was in this way that

* Blackstone, III. c. 7.

the encroachments of the Courts Christian were in a measure repressed, although it was the ground of continual struggle from the reign of Henry the Second. The statute called "circumspecte agatis" was made in the reign of Edward the First, for the purpose of determining the bounds of the two jurisdictions, but it produced no great effect; so also the 9 Ed. II. was passed with as little result: mutual jealousies and contests ensued from time to time, until the opposition was taken away by the intervention of a paramount authority. Even as late as the reign of James the First, the contest for jurisdiction between the temporal and ecclesiastical Judges was renewed by the articles which Archbishop Bancroft exhibited to the lords of the privy council, in the name of the clergy, when the question was finally set at rest by the unanimous resolution of all the Judges, which Sir E. Coke properly calls the highest authority in law, and no one who loves the Church with a true and wise affection will desire that it should ever be disturbed.* The power of the temporal courts to regulate, and limit the proceedings of the ecclesiastical was thus established, and the Supremacy of the Crown "in all causes and over all persons" fully admitted. This power, great in its amount and wide in its reach, as it must be acknowledged, did not originate with the Reformation, nor was it an invention of Henry the Eighth, or of those who were disposed to promote

* Collier, 2. p. 688; also Collier, 1. p. 510.

his wishes. There is no doubt that the evil passions of the King made him more resolute in maintaining his claim than any of his predecessors had been. Yet the weapons which he employed against Rome were not of his own forging, but such as he found ready for his use. It was not necessary to do more than to assert with firmness and determination, the right which former sovereigns were fully conscious of possessing *de jure*, although many circumstances interfered with the maintenance of them. The Reformation was not as to doctrine the establishment of a new faith, but the revival of that true and ancient religion of the Gospel, which had either been implicitly denied, or had been overlaid with human inventions, of which the first ages knew nothing; so in discipline there was not the contrivance of a new scheme of Church government, but the readjustment, according to ancient precedents, of the relations between the spiritual and temporal authorities. It is not a question about the personal character of the King, which few of us will undertake to defend, but about the great and salutary changes which took place in ecclesiastical polity under the sanction of his government. To confound the one with the other, and to make the odium which justly attaches to the former, useful for disparaging the latter, is disingenuous and unworthy. God can accomplish His purposes by the worst and vilest instruments, making them unconsciously work His will. All the records of providential history are full of instances.

Lord Coke, in his fifth report “*de jure Regis ecclesiastico*” which has been so frequently quoted in our recent controversies, declares that the act 1 Eliz. 1. is not “introductory of a new law, but declaratory of the old.” We may add that in 5. Eliz. c. 1. s. 14, it is expressly stated, “That the Queen neither doth nor will challenge any authority, but such as was of ancient time due to the Imperial Crown of this realm, that is, under God to have the sovereignty and rule over all manner of persons, born within these her realms, dominions, and countries, of what estates, either ecclesiastical or temporal soever they be, so as no other foreign power shall or ought to have any superiority over them.”* Just as it had been recited in the preamble to the statute for restraint of appeals, that “it appears from ancient histories and authentic records that the realm of England is an Empire governed by one Supreme Head and King, to whom the whole nation owes a natural and humble obedience; but the people are divided in terms and by the names of the Spirituality and Temporality.” In the constitutions of Clarendon these principles are maintained without any appearance of innovation, and they received general admission. Although in the end the purpose of the King and of his barons and bishops was overborne by foreign influence, these articles remain for undeniable evidence of the claim of Supremacy having been preferred on behalf of the crown, and

* Stillingfleet, II. 95.

having received national assent. "We flatter not our Prince," says Bishop Jewel, "with any new imagined extraordinary power, but only give him that prerogative and chiefly that evermore hath been due to him by the ordinance and Word of God; that is to say, to be the nurse of God's religion, to make laws for the Church, to hear and take up questions of the faith, if he be able, or otherwise to commit them over by his authority to the learned, to command the bishops and priests to do their duties, and to punish such as be offenders."* "Lay these particulars together;" says Archbishop Bramhall, "our kings from time to time called councils, made ecclesiastical laws, punished ecclesiastical persons and saw that they did their duties in their callings, prohibited ecclesiastical judges to proceed, received appeals from ecclesiastical courts, rejected the laws of the Pope at their pleasure with a "nolumus" "we will not have the laws of England to be changed," or gave legislative interpretations of them as they thought good, made ecclesiastical corporations, appropriated benefices, translated Episcopal Sees, forbade appeals to Rome, rejected the Pope's Bulls, protested against his legates, questioned both the legates themselves, and all those who acknowledged them, in the King's Bench condemned the excommunications and other sentences of the Roman Court, would not permit a peer, or baron of the realm to be

* Works, Part 3, p. 167.

excommunicated without their consents, enjoyed the patronage of Bishopricks and the investitures of Bishops, enlarged or restrained the privilege of clergy, prescribed the endowment of vicars, set down the wages of priests, and made acts to remedy the oppressions of the Court of Rome. What did King Henry the Eighth in effect more than this?"* So again, "Thus our laws were in the right when they called the act of Supremacy restoring the rights of the crown; for if we take away all the papal usurpations as to appeals, exemptions of persons, dispensations, provisions, making canons, sending legates to hold courts, to call convocations, &c. we may easily understand what the Supremacy is, viz. a power of governing all sorts of men, according to the laws ecclesiastical and temporal without any foreign jurisdiction." So Bishop Kennett writing on the restraint of the clergy from making canons adds, "If they had before presumed to do it in their own Courts, it was owing to a papal usurpation, which the national courts of justice never did acknowledge. It becomes the Divine to learn this piece of law, that the English Church was alway in subjection to our Christian kings, and their Supremacy of original custom, was but restored by express statute."† The right was not always in exercise because in the words of Lord Coke, "though *de jure* both the jurisdictions were ever in the crown, yet the one was sometimes usurped

* Works, Vol. i. p. 150.

† Eccles. Synods, p. 211.

by the See of Rome." Stillingfleet has examined with some minuteness the instances adduced by the great Chief Justice; but it seems to have been forgotten in the use which has been lately made of his careful review, that the case which he had in hand regarded the power of the crown to appoint a commission for proceeding in *primâ instantiâ* by ecclesiastical censures, which is so unlike the question now discussed, as to make much of his statement inapplicable. And whether or not the conclusion at which Lord Coke arrived were borne out by his citations, we must remember that there were great authorities in his own science who took the same view as himself, such as Fitzherbert among the old lawyers, and Blackstone among the modern. That the powers claimed for the Sovereign are but the resumption of an ancient right is also asserted again and again in contemporary documents. Those who had the greatest share in establishing the present relations of the Church and state, professed that they were giving back a jurisdiction to the crown of which it had been deprived by usurpation, that they were not innovating, but restoring. We ought to be satisfied with nothing short of very clear proof, before we admit that those who speak so confidently about the character of their own work, and who deserve so well to be trusted, have not only upheld false principles but have read our Church records wrongly. To maintain in the face of these great authorities, that the state ecclesiastical ought to have no dependence on the civil

power, would be a difficult undertaking, and in these times would promise no very successful issue. The duty however of advancing truth at all hazards is very plain; but what if it should turn out that we have Scripture and ancient records and the reason of the case against us?

SECTION 5.

WE have been occupied hitherto with statements rather than with their defence. It appears by unimpeachable evidence, that the Supremacy claimed for the crown in ecclesiastical things is an authority which reaches far beyond what is temporal and external, that it includes in its range all persons and causes within the Church, and that it professes to be the recovery of an ancient right, and not the exercise of a new power. But can the claim be vindicated by reasons adequate to its extent? what is the witness of the Word of God? How does the practice of the early Church tell upon the case? Will the facts of our own history and the character of the English constitution support the conclusions which our divines and others have advanced? It is no more than reasonable that plain unevasive answers should be demanded. The issues involved are very great, more important indeed than have been generally understood, for not only will this question of the Supremacy prove to be the hinge of the particular

controversy with which it seemed to have connexion, but it marks out the line on which the Catholic standing of our Church will be attacked. The testimony of Scripture, although furnished under circumstances not exactly parallel to our own, is very strong by the force of analogy. That which God was pleased to sanction during many ages among the people who had the blessing of His special direction, cannot be at any other period pronounced so wrong in principle as to be *ab initio* inadmissible. And, unless the examples with which the Old Testament abounds are invalidated by principles clearly laid down in the New, they remain for our guidance in determining the amount of obedience due from the Church to the Civil power. There is not much which refers to the subject of our present enquiry in the teaching of the Apostles. St. Paul writes to the Romans "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God." xiii. 1. And St. Peter in his first general Epistle to the same effect, "Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the King as supreme: or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well." 1 Peter ii. 13, 14. In these and similar places there is no more than the inculcation of a general duty. For obvious reasons nothing else was to be expected in the civil condition of the Church which long survived the days of the Apostles, and we are left to use

for our guidance the examples which belong to the period of the old dispensation, so far as they are found applicable.

Moses, in his government of Israel, exercised royal authority. "He was king in Jeshurun, when the heads of the people and the tribes of Israel were gathered together." Deut. xxxiii. 5. He appointed the order of sacrifice and worship; and the summoning of assemblies was his prerogative. His control extended over Aaron and the priesthood, as well as over the laity. Their subordination was that of the ecclesiastical to the civil power.

It was Joshua, not Eleazar, who gathered all the tribes of Israel to Shechem, and bound them by a solemn engagement to the service of God. "So Joshua made a covenant with the people that day, and set them a statute and an ordinance in Shechem, and Joshua wrote these words in the book of the law of God, and took a great stone, and set it up there under an oak, that was by the sanctuary of the Lord." Joshua xxiv. 25, 26.

When Saul was appointed to the kingdom he was made head over all the tribes, and the tribe of Levi had no exemption.

David being placed on the throne, undertook the revival of religion, which had fallen into decay. He summoned the priests and Levites, and gave them commandment for bringing back the ark. 1 Ch. xv. 12. In his old age he called the Levites before him, and divided them into courses, 1 Ch. xxiii. 6.; as we

read that he had previously “appointed certain of the Levites to minister before the ark of the Lord, and to record, and to thank and praise the Lord God of Israel.” 1 Ch. xvi. 4.

Solomon summoned the ministers of religion to the dedication of the temple. “And he appointed, according to the order of David his father, the courses of the priests to their service, and the Levites to their charges, to praise and minister before the priests, as the duty of every day required: the porters also by their courses at every gate: for so had David the man of God commanded. And they departed not from the commandment of the King unto the priests and Levites concerning any matter or concerning the treasures.” 2 Ch. viii. 14, 15. He “thrust out Abiathar from being priest unto the Lord.” And although what Leslie writes is true, in respect to this case,* that in removing Abiathar, Solomon not only fulfilled God’s purpose against Eli’s house, but also restored the line of Eleazar after the usurpation of the house of Ithamar, it leaves the weight of the example untouched.

When there was a restoration of religion in the time of Asa, it was the King who put away the idols, and gathered the people in a solemn assembly for renewing their covenant with God. 2 Ch. xv.

Jehoshaphat “walking in the ways of his father David,” sent Levites, “and they taught in Judah,

* Case of the Regale.

and had the book of the law of the Lord with them, and went about throughout all the cities of Judah, and taught the people." 2 Ch. xvii. 9. When an invasion of the land was threatened, "Jehoshaphat feared, and set himself to seek the Lord, and proclaimed a fast throughout all Judah. And Judah gathered themselves together, to ask help of the Lord: even out of all the cities of Judah they came to seek the Lord." 2 Ch. xx. 3, 4.

Of Hezekiah we read that "In the first year of his reign, in the first month, he opened the doors of the house of the Lord, and repaired them. And he brought in the priests and the Levites, and gathered them together into the east street, and said unto them, Hear me, ye Levites, sanctify now yourselves, and sanctify the house of the Lord God of your fathers, and carry forth the filthiness out of the holy place." 2 Ch. xxix. 3, 4, 5. He addressed them as being the person who had the supreme charge of religion. "My sons, be not now negligent; for the Lord hath chosen you to stand before him, to serve him, and that ye should minister unto him, and burn incense." Verse 11. So again, "He set the Levites in the house of the Lord with cymbals, with psalteries, and with harps, according to the commandment of David, and of Gad the king's seer, and Nathan the prophet: for so was the commandment of the Lord by his prophets." Verse 25. "Moreover Hezekiah the king and the princes commanded the Levites to sing praise unto the Lord with the words of

David, and of Asaph the seer. And they sang praises with gladness, and they bowed their heads and worshipped." Verse 30.

Josiah took away the idols from the land, and we read that "the King stood in his place, and made a covenant before the Lord, to walk after the Lord, and to keep His commandments, and His testimonies, and His statutes, with all his heart, and with all his soul, to perform the words of the covenant which are written in this book. And he caused all that were present in Jerusalem and Benjamin to stand to it. And the inhabitants of Jerusalem did according to the covenant of God, the God of their fathers." 2 Ch. xxxiv. 31, 32.

There was no invasion of the priest's office in ministry or sacrifice permitted to the kings of Judah and Israel; one who transgressed in this respect was dethroned, and another was struck with leprosy; but extensive power was given them for regulating the worship and reforming the faith of the people, and for direction and control in the Church.

Whatever force and application may be allowed to the instances cited, it is beyond denial that they give no countenance to the notion of an imperial power in the ecclesiastical state; while they prove that "godly princes" interposed authoritatively in the affairs of national religion.

Bishop Jewel writes thus, "By that authority Moses being a magistrate rebuked Aaron the bishop for making the golden calf; Joas being king re-

duced the riot of the priests; Solomon being king first built the temple of God, and put down the high priest Abiathar, and set up Zadoc." Again, "For this cause they are kings to serve the Lord. And therefore they do not well that divide the commonweal in two, and devise two heads, the one for the spirituality, and the other for the laity."*

Hooker takes the same view. "It was not thought fit in the Jews' commonwealth that the exercise of Supremacy ecclesiastical should be denied unto him, to whom the exercise of chieftly civil did appertain; and therefore their kings were invested with both." "By this power David, Asa, Jehoshaphat, Josias and the rest made those laws and orders, which sacred history speaketh of, concerning matters of mere religion, the affairs of the temple and service of God. Finally, had it not been by the virtue of this power, how should it possibly have come to pass, that the piety or impiety of the kings did always accordingly change the public face of religion, which things the Prophets by themselves never did, nor at any time could hinder from being done? Had the priests alone been possessed of all power in spiritual affairs, how should any thing concerning matter of religion have been made but only by them? In them it had been, and not in the king, to change the face of religion at any time; the altering of religion through the making of ecclesiastical laws, with other the like

* Works, part 2, p. 990.

actions belonging unto the power of dominion are still termed the deeds of the king; to show that in him was placed the Supremacy of power in this kind over all, and that unto their priests the same was never committed, saving only at such times as the priests were also kings and princes over them. According to the pattern of which example the like power in causes ecclesiastical is by the laws of this realm annexed unto the crown.” *

Jeremy Taylor having adduced examples from the Old Testament, adds, “This is indeed an excellent argument, because it was a time in which God gave His priests more secular eminency and external advantages than ever He did since, and also because Christ changed nothing in the kingdoms of the earth; He left them as He found them, only He intended to make them ministers and portions of his kingdom, and that they should live privately, and govern publicly by His measures, that is, by the justice and mercy evangelical. But this argument I was the more willing to touch upon because the Church of England much relies upon it in this question, and excommunicates those who deny the supreme civil power to have the same authority in causes ecclesiastical which the pious kings of the Hebrews had over the synagogue.” †

* B. 8, p. 407.

† W. xiii. p. 490.

SECTION 6.

THE history of the Christian Church for 300 years furnishes no precedents applicable to our present enquiry. It existed in the midst of heathenism without endowment or immunities of any kind, bearing no other relation to the state than that which bound its members in their secular character. It received either hostility or contempt; in the worst times it was persecuted; in the best, it was neglected. When the Empire was converted to the faith of the Gospel the Church was immediately elevated in its outward condition. Its influence pervaded the whole national life. Christians, no longer isolated or overlooked, became the overwhelming majority. It was no longer the interference of a hostile and powerful authority which was in question; they had become themselves the State, and they filled all offices from that of Emperor to the lowest department of civil employment. In exact proportion to the greatness of this change, a new element of ecclesiastical polity was introduced. The State having renounced heathenism, became by a natural and necessary arrangement, the supreme director of the church. The historian, Socrates, says expressly, "We include Emperors in our history, because from the time that they began to be Christian, all ecclesiastical things have depended upon them."*

* Præf. lib. v.

From the decree of Milan, A.D. 313, the influence of the State, explain it how we may, cannot be denied. Great privileges were assigned to the Church by its princely converts; it received not only protection, but ample property, and, within certain limits, very important jurisdiction; but at the same time it is equally clear that the supreme civil power interposed very widely in legislation and discipline, in visitation and in questions of faith. This Supremacy grew up while the Church and State were in relations of perfect harmony. There was neither protest nor opposition; on the one side benefits were lavishly bestowed, and on the other obedience cheerfully rendered. We cannot stop short of this period; nor limit our enquiries to those after ages, when mutual jealousies had arisen, and then long and obstinate struggles for dominion. No amount of authority exercised by the Church in the eleventh century will explain away the submission which it rendered willingly in the fourth. If the investigation seem to have a more antiquarian character than suits the practical tendency of the time, we must yet remember that it is indispensable, if we would form a true judgment on the question which has been raised. The Supremacy claimed for our princes is the same which was possessed by Christian Emperors of the primitive church. "King Henry the Eighth," writes Archbishop Bramhall, "had the same imperial power, and was as much a sovereign in his own kingdoms, as Justinian the emperor in his larger dominions, (as William Rufus, son and successor of

the Conqueror, said most truly, that ‘the kings of England have all those liberties in their own kingdoms, which the emperors had in the empire,’) and had as much authority to exempt his own subjects from the jurisdiction of one patriarch, and transfer them to another; especially with the advice, consent, and concurrence of a national synod.”* Constantine exercised so much authority in the Church as to have a certain episcopal character attributed to him.† He summoned councils, revised ecclesiastical sentences, gave direction about the qualifications and offices of the clergy, prescribed the duties of bishops, threatened them with banishment and deprivation, and in other ways asserted an ecclesiastical Supremacy by word and act. And his successors maintained the same authority over the Church. In the words of Bishop Bilson, “Though Valentinian distrusted his own judgment in matters of faith, yet that did not fray Theodosius, a prince highly commended by Ambrose himself, from looking into the strife between the Homousians and Arians, and appointing by a solemn edict which of them should be accounted catholics, which heretics; and taking their churches from them without their consents. For he, not long after he was called to the empire by Valentinian’s eldest son, (Socrat. lib. 5. cap. 10,) willed every sect to put their faith in writing. At the day prefixed the bishops of every religion, being sent for,

* Works, i. p. 178.

† Vit. i. c. 37.

came to the court, Nectarius and Agelius for the Homousians, (or Catholics,) Demophilus for the Arians, Ennomius himself for his followers, and for the Macedonians Eleusius. When they were come, the prince admitted them to his presence, and taking the paper of each man's opinion heartily besought God to help him in choosing the truth. Then reading their confessions written he rejected all the rest, as dividing and severing the sacred Trinity, and tare them in pieces, and only liked and embraced the Homousian faith; and therewithal made a law that such as followed that faith should be counted Christian Catholics, the rest infamous heretics."*

"The clergy indeed endeavoured, backed as they were by imperial privileges, to make themselves as independent as possible of the other authorities of the state, but they still acknowledged the Emperor to be their highest judge; so much so, that the Roman Bishop regarded it a distinction to be judged only by the Emperor. None ventured to call in question the supreme authority of the Emperor, as far as it did not violate the rights of conscience; and the imperial laws, even when they touched the church, were received by the Bishops with implicit obedience."† The history of Justinian's reign, as might have been expected, affords great information. His code, from

* Bilson's True Difference between Christian Subjection and Unchristian Rebellion. 2nd part, p. 244.

† Gieseler 1. p. 421.

which as their chief source, the laws of modern Europe have been drawn, furnishes beyond comparison the fullest exposition of the relation in which the civil power stood to the church. It contains the proof of what had been claimed by his predecessors as well as by himself. He enlarged greatly the privileges of the clergy, giving them the oversight of public morals and the administration of justice, of the choice of magistrates and the use of municipal funds, besides an enlarged jurisdiction in what more particularly related to their office ; but in the same proportion he made them more dependent on the state. He sent from time to time ecclesiastical laws to the Bishop to be promulgated, just as civil laws were transmitted to the Prefect. Assuming the necessity of the imperial sanction, he gave authority to the canons of the four great councils, and incorporated them into the laws of the Empire. He summoned the second Council of Constantinople, even against the mind of the Church, and banished Pope Vigilius for refusing to attend. He made laws for the deposition of Bishops in certain cases ; and prescribed even the mode in which the priest should celebrate divine service. This interposition extended very far beyond mere regulation and external government, as we may satisfy ourselves by the very titles of the Code and the Novels, which reach the highest subjects, such as creeds, sacraments, the determination of heresy, &c. He ruled such questions as part of his prerogative ; thus he condemned the opinions of Origen, and the writings

once famous, now long forgotten, called the three chapters.* He anathematized Severus, Anthimus, and others, denouncing the heaviest penalties against those who should preach their doctrine.† His legislative power was as great in the Church as in the Empire. De Marca‡ does not attempt to deny its extent, which is beyond question, but at the same time he tries to vindicate this exercise of the Regale, as not being beyond what the Roman Church would admit, on the ground that he made no new provisions, but only incorporated former canons in to the laws of the empire. His words are these:—

“Mihi videtur jure suo usum fuisse Justinianum, qui legibus latis non canones condidit, sed conditos fovit et amplificavit: quia jus illud tuitionis ecclesiasticæ Principibus Christianis à Deo commissæ exigit ut leges pro religione divina ferant, quemad-

* Dupin, l. p. 710.

† Evag. Hist. iv. 11.

‡ The work of the learned Archbishop of Paris, “*De Concordantiâ Sacerdoti et Imperii*,” needs to be used with some caution. Those who are well acquainted with it will acknowledge the justice of the terms in which Bishop Burnet speaks, “I cannot commend his ingenuity so much as I must do his other excellent qualities, for he has written defectively, and has concealed very many things, to which a man so conversant in all parts of ecclesiastical learning as he was, could not be a stranger.” (Pref. to “*Rights of Princes*.”) His task was difficult, for he had to maintain on the one side, the freedom of the Gallican church, and on the other, to avoid giving offence to the see of Rome. His conclusions may have seemed necessary to his position, but they are often inconsistent with each other, and with the facts of history on which they are built.

modum docuit Augustinus ;”* and he goes on to cite the words of the Emperor’s rescript, “Semper nostræ Serenitati cura fuit servandæ vetustatis, maximè disciplinæ, quam numquam contempsimus, nisi ut in melius augeremus, &c.” But this exception takes away all the force of the plea. To enlarge the ancient canons and make them binding in their amended form ; or to take custom and change it into law, is as high an exercise of power as would satisfy the ordinary claims of Royal prerogative. But the truth is that there are numerous enactments, both of Theodosius and Justinian, for which it would be impossible to find any previous authority. But so paramount and unquestioned was the exercise of the Supremacy at this time and long afterwards, that imperial ordinances were obeyed even when the justice of them was denied. Thus when the Emperor made a law to restrain soldiers and others in the public service from embracing the monastic life, Gregory the Great, though he remonstrated against what he believed to be an unrighteous edict, did not venture to disobey. “Ego quidem jussioni subjectus eandem legem per diversas terrarum partes transmitti feci : et quia lex ipsa Omnipotenti Deo minime concordat, ecce per suggestionis meæ paginam serenissimis Dominis nuntiavi. Utrobique ergo quæ debui exsolvi, qui et Imperatori obedientiam præbui, et pro Deo

* De Concord. lib. ii. c. 11.

quod sensi minime tacui.”* Constantine was wont to say to the Bishops, “Vos intra ecclesiam, ego extra ecclesiam, à Deo Episcopus constitutus sum.” In the edict of Valentinian and Marcian, which approves the acts of the Council of Chalceda, they are both called “illustrious bishops.” The Emperor Leo the Third, in his epistle to Gregory, says of himself, “I am both a king and a priest,” meaning in office not in order, in government not in ministry.† Under Charlemagne, in the same way, the civil power exercised the amplest control over all affairs of the Church, enlarging, correcting, confirming and altering at pleasure whatever had been decreed in Councils. On the one hand, the Emperor granted tithes to the clergy, and enforced the payment; gave them land free from rent and tax, allowed the exemption from civil courts, with other benefactions and privileges; so on the other hand, he asserted a very wide authority in ecclesiastical matters, ruling questions of faith, deciding what books should be read in churches, and what saints should receive honour, he exercised supreme judicature and undertook the business of discipline and reformation, he enacted ecclesiastical constitutions in mixed assemblies, and made them binding on the clergy; he commanded synods to assemble at Arles, Mentz, Rheims, Tours and Chalons, to make canons according to his direction, which having revised, he ratified and published

* Lib. iii. Ep. 65.

† Jeremy Taylor, W. xiii. p. 535.

with the civil sanction of his capitularies. He gave the largest visitatorial powers to his commissioners over bishops and priests, monks and nuns, churches and church services. “*Canonum executionem,*” says De Marca, “*et capitularium constitutionum ab Episcopis Princeps exigere solebat, delegatis per provincias viris consultissimis qui Missi dominici vocabantur, quorum auctoritate aut quæ per negligentiam peccata erant in canones corrigebantur, aut si majorem operam desiderarent, ad Regem referebantur.*”^{*} In the words of Gieseler, “Ecclesiastical legislation, the highest judicial power in church affairs, the management and confirmation of ecclesiastical decrees remained with the king, who summoned the spiritual as well as the civil feudatories to diets, conducted spiritual causes by the Apocrisiarius (or Archicapellanus, afterwards Archicancellarius), as he did civil causes by the Comes Palatii; and sent round into every province two extraordinary judges (*missi*) a bishop and a count, to exercise in common the highest oversight and power in things ecclesiastical as well as civil.”[†] Charlemagne opposed the decision of the second council of Nice on image worship; and in the book which passes under his name, whether written by himself or Alcuin, he refuted its conclusions, and in spite of the representations of the Pope, he convened the Council of Frankfort, A. D. 794, in which he himself presided, and pronounced against

^{*} De Concord. lib. iv. c. 7.

[†] II. p. 241.

the decrees of A. D. 787. After the dissolution of the empire, the tradition of the same ecclesiastical power still remained. We find it in the capitularies of Charles the Bald, who commands all bishops, abbots and counts, to attend the visitation of his commissioners. “*Ut omnes Episcopi, Abbates, et Comites, excepta infirmitate vel nostra jussione, nullam habeant excusationem, quin ad placita Missorum nostrorum veniant, aut talem vicarium mittant, qui in omnibus causis pro illis rationem reddere possit,*” * and in the laws of St. Louis, who solemnly charges the bishops “*ut quantum ad vestrum ministerium pertinet, nobis veri adjutores in administratione ministerii nobis commissi existatis, ut in judicio non condemnari pro nostrâ et vestrâ negligentia sed potius pro utrorumque bono studio remunerari mereamur.*” †

“Weigh all the parts of ecclesiastical discipline,” says Archbishop Bramhall, “and consider what one there is which Christian Emperors of old did not exercise by themselves, or by their delegates, or did not regulate by their laws, or both; concerning the privileges and revenues of Holy Church, the calling of councils, the presiding in councils, the dissolving of councils, the confirming of councils; concerning holy orders; concerning the patronage of, and nomination to, ecclesiastical benefices and dignities; concerning the jurisdiction, the suspension, deposition, and ordering

* Gieseler, ii. p. 256.

† De Concord. lib. iv. c. 7.

of bishops, and priests, and monks, and generally all persons in holy orders ; concerning appeals ; concerning religion and the rites and ceremonies thereof ; concerning the creeds or common symbols of faith ; concerning heresy, schism, Judaism, the suppression of sects ; against swearing, cursing, blaspheming, profaneness, and idolatry ; concerning sacraments, sanctuaries, simony, marriages, divorces, and generally all things which are of ecclesiastical cognizance : wherein he that desires satisfaction, and particularly to see how the coercive power of ecclesiastical courts and judges did flow from the gracious concessions of Christian princes, may (if he be not too much possessed with prejudice) resolve himself by reading the first book of the code, the Authorities or Novels of Justinian the emperor, and the Capitulars of Charles the Great, and his successors, kings of France.* And yet there was no invasion of the honour due to God's ministers, nor any disregard of the office which they filled, as it is expressed by Hooker, " Was there any Christian bishop in the world which did then judge this repugnant unto the dutiful subjection which Christians do owe to the pastors of their souls ; to whom in respect of their sacred order, it is not by us, neither may be denied, that kings and princes are as much as the very meanest that liveth under them, bound in conscience to show themselves gladly and willingly obedient ; receiving the seals of salvation,

* W. i. p. 171.

the blessed sacraments at their hands, as at the hands of our Lord Jesus Christ, with all reverence, not disdain to be taught and admonished by them, nor withholding from them as much as the least part of their due and decent honour? All which, for any thing that hath been alleged, may stand very well without resignation of supremacy of power in making laws, even laws concerning the most spiritual affairs of the Church ; which laws being made among us, are not by any of us so taken or interpreted as if they did derive their force from power which the Prince doth communicate unto the Parliament, or unto any other court under him, but from power which the whole body of the realm being naturally possessed with, hath by free and deliberate assent derived unto him that ruleth over them, so far forth as hath been declared. So that our laws made concerning religion, do take originally their essence from the power of the whole realm and Church of England, than which nothing can be more consonant unto the law of nature, and the will of our Lord Jesus Christ.”*

To the same effect wrote Bishop Jewel.

“ Let us see then such men as have authority over the Bishops, such men as receive from God commandments concerning religion, such as bring home again the ark of God, make holy hymns, oversee the priests, build the temple, make orations touching

* B. viii. p. 428.

divine service, cleanse the temples, destroy the hill altars, burn the idols' groves, teach the priests their duty, write them out precepts how they should live, kill the wicked prophets, displace the high priests, call together the councils of Bishops, sit together with the Bishops, instructing them what they ought to do, condemn and punish heretical Bishops, be made acquainted with matters of religion, which subscribe and give sentence, and do all these things, not by any other man's commission, but in their own name, and that both uprightly and godly : shall we say it pertaineth not to such men to have to do with religion ? Or shall we say a Christian magistrate which dealeth amongst others in these matters, doth either naughtily, or presumptuously, or wickedly ? The most ancient and Christian emperors and kings that ever were, did occupy themselves in these matters, and yet were they never for this cause noted either of wickedness, or of presumption. And what is he that can find out either more Catholic princes, or more notable examples ? ” *

SECTION 7.

THE cases which occur of ecclesiastical authority exercised by princes are not few and isolated, but they occur throughout the whole record of European

* *Apology*, cap. 15, div. 1.

76 *No jealousy on the part of the Church.*

history. It was no novelty of the sixteenth century, as some are trying to persuade us, but it began with Constantine, and has never ceased. It was no oppression of the Church, but a government accepted without reluctance or jealousy. Let us take an instance in proof of the readiness with which the Church submitted to the Royal Supremacy. A. D. 614 the council of Paris enacted various canons on important subjects, such as the election of Bishops, the exemptions of clergy, &c. The edict of the King by which they were confirmed, modified them greatly, and in some respects totally changed their character; and yet so far was this from exciting either opposition or complaint, that another council A. D. 630 denounced excommunication against all who should violate this edict.* The early Church had no hesitation in acknowledging the claim of princes; they rendered honour to them ungrudgingly. “Colimus imperatorem,” are the well known words of Tertullian, “ut hominem a Deo secundum, solo Deo minorem.” To quote the words of Bilson, “Chrysostom (ad Pop. Ant. Homil. 2.) calleth the Emperor the highest and head of all men upon earth. Justinian saith, (Novel. Const. 133) the Emperor hath received a common government and principality over all men. Ambrose (De Obitu Theodosii) saith of Theodosius that he had power over all men. And Gregory (Greg. epist. lib. 3, cap. 100, and cap. 103) affirmeth

* De Marca, lib. 6, c. 7.

that power is given to princes from heaven over all men, not only soldiers, but also priests. And since I before concluded, and you confessed, all men, were they monks, priests, bishops, or whatsoever, to be subject to the prince's power and authority both in causes ecclesiastical and temporal, why should that now be revoked or doubted? * There is a consistent testimony to the greatness of the Royal prerogative in ecclesiastical matters, and extending through many centuries, which is furnished not only by the record of what was done by princes, but also by the legislation, in which the principles of their government were formally expressed; and it is not affected by the authority of some great and venerable names which may be cited against the lawfulness of appeal to the civil jurisdiction. We shall find that the secular power was invoked when its interposition was likely to be favourable, and deprecated when the reverse was to be expected. This is especially to be noted in the case of the Arian controversy, in which we find Bishops and others protesting against lay interference; but it was under circumstances in which there was a certainty that its influence would be adverse. Sometimes the forbidding under anathema all recourse to secular judgments is to be explained by the fact that the courts were still heathen, as in the case of the twenty-first canon passed in the first synod of S. Patrick. Sometimes the citation

* Bilson's True Diff. 2nd part, p. 202.

78 *Circumstances of certain canons to be weighed.*

proves too much, that is, it would imply the exemption of the clergy not only in ecclesiastical causes, but in those likewise which were of a civil or criminal character, which was clearly an invasion of the powers of the magistrate, and is indefensible. The fifteenth canon of the African code, for instance, is as follows, "If any bishop, priest, deacon, or clergyman, when he is charged with any crime in the Church, decline the ecclesiastical judicature, and apply himself to the civil, if it be in a criminal matter, he shall lose his place, though he carry his cause; but in a civil matter, he shall lose what he recovered by suit, if he will retain his place."* We must also be on our guard against receiving implicitly the canons of a Council, until we have examined the circumstances under which they were framed. Thus the twelfth canon of the Council of Antioch has been confidently quoted, as if it were conclusive. It is as follows: "If any priest or deacon being deposed by his bishop, or any Bishop being deposed by the Synod, do presume to trouble the Emperor's ears, it is fit that he be referred to a greater Synod of Bishops, and to allege what he thinks reasonable in his own behalf before those Bishops, and to abide by the examination and decision made by them: but if, despising them, he trouble the Emperor, he shall be treated as one who deserves no pardon, nor be allowed another hearing, nor have any hopes of restitution for

* Johnson's Vade Mecum, II. p. 175.

the future.”* But this council is known to have contained Arian Bishops, and on this ground it is objected against by Chrysostom and Athanasius. Johnson says of this particular canon, “it was intended against Athanasius, who being deposed by a Synod, was restored to his see by the authority of the Emperor only ; therefore he was by this Synod again deprived of his bishoprick ; for he ought to have been restored by a greater Synod than that which deposed him. So John Chrysostom was afterwards condemned for reassuming his bishoprick at the command of the Emperor, and by the permission of a Synod, because this Synod was less than that by which he stood condemned ; and they who were his adversaries proceeded by virtue of this canon.† Again, the words of certain Emperors have been adduced, to prove that they disclaimed for themselves the ability, as well as the right to interfere in the affairs of the Church. But we must consider that those who spoke, were persons overcharged with business, sometimes engaged in the conduct of great wars, and always hindered by affairs of state. They would gladly have left the general administration of the Church in the hands of ecclesiastics, so long as they retained for themselves the right of the final appeal. They might gracefully decline to interfere in ordinary cases ; and they could afford to make great concessions while they retained possession of

* Vade Mecum, II. p. 95.

† Idem.

substantial power. As long as the Emperor had authority to appoint and depose Bishops, in supporting their influence he was maintaining his own. To affirm that he was their instrument and agent, is against all evidence; the converse is much more the truth. This may go far to explain the inconsistency between words and acts, which is sometimes so remarkable; and we must learn not to insist much on the value of phrases whatever they might mean, when they are contradicted by deliberate documents, in which the right of interference is claimed, or by active and energetic measures in which the claim is embodied, when the occasion called for them. Those were very remarkable words of Constantine, which Ruffinus records, “*Deus vos constituit sacerdotes, et nobis à Deo dati estis dii; et conveniens non est ut homo judicet deos, sed ille solus de quo scriptum est, Deus stetit in synagoga deorum, in medio autem deos discernit.*” * Let us observe in what a very different spirit he was prepared to act. In his epistle to the Nicomedians he writes, “If we have chaste and orthodox Bishops, and endowed with humanity, we rejoice; but if any one shall audaciously, and unadvisedly be vehemently affected to the memory and praise of those pests,” (Eusebius and other Bishops) “he shall straight be repressed by my execution as the minister of God,”—and accordingly they were “spoiled of their dignities, and cast out of

* Lib. i. Hist. c. 2.

the cities.”* So we read again that on a certain occasion, Valentinian the elder thus expressed himself: “It is not lawful for me, who am of the people, to search curiously such matters; let priests who have care of these things meet when they please.”† It was his answer to certain orthodox Bishops, who although not under his jurisdiction, desired his countenance in the settlement of a profound subject which was in debate; and how much prudence he displayed we may learn from the words of Hooker, “We must with the Emperor’s speech weigh the occasion and drift thereof. Valentinian and Valens, the one a Catholic, and the other an Arian, were Emperors together, Valens the Governor of the east, and Valentinian of the west Empire. Valentinian therefore taking his journey from the east unto the west parts, and passing for that intent through Thracia, there the Bishops which held the soundness of Christian belief, because they knew that Valens was their professed enemy, and therefore if the other was once departed out of those quarters, the Catholic cause was like to find very small favour, moved presently Valentinian about a council to be assembled under the countenance of his authority; who by likelihood considering what inconvenience might grow thereby, inasmuch as it could not be but a means to incense Valens the more against them, refused himself to be

* Theodoret, i. c. 19. quoted by Bramhall, ii. p. 226.

† Sozomen, lib. vi. c. 7.

the author of, or present at any such assembly; and of this his denial gave them a colourable reason, to wit, that he was, although an Emperor, yet a secular person, and therefore not able in matters of so great obscurity to sit as competent judge: but if they which were bishops and learned men, did think good to consult thereof together, they might. Whereupon when they could not obtain that which they most desired, yet that which he granted unto them they took, and forthwith had a council.”* And it was this very Emperor, who although he refused to interfere with the subjects of another prince, did in his own dominions sanction the true doctrine, and command it to be preached; and “going into the west furnished that region with excellent laws, and began with the preaching of true piety.”† On suitable occasions he both exercised discipline, and ruled points of faith. Again, Theodosius the younger, in his Epistle to the Synod of Ephesus writes, “It is not lawful for him that is not a bishop to meddle with ecclesiastical matters.” Yet as Archbishop Bramhall has well observed; it is the same Theodosius who made the following law, “We deem that they who follow the ungodly faith of Nestorius, or obey his wicked doctrine, if they be bishops, be cast out of the holy churches, but if laymen, anathematized.”‡

* Book viii. p. 426. † Theodoret. Hist. Eccl. lib. iv. c. 5.

‡ Evag. Hist. Eccles. lib. i. c. 12.

SECTION 8.

To deny that history warrants the allowance of a very large extent to the Royal prerogative is hopeless, but it has been proposed to take away the force of the early precedents, by showing how they fall short of the present claims advanced by the civil power. If a distinction could indeed be established, between what was done with general consent in the early Church, and what takes place by an overruling authority among ourselves, to this extent the instances would be inadequate, and the conclusions built on the analogy, would be incorrect. But there is no intelligible line of separation which we can draw. We may of course construct a theory, but it will be worthless unless it can be applied to all the facts of the case. Now the difficulty of the undertaking will be apparent to us, if we try to find a point beyond which the Supremacy did not pass in the early Church, but which it exceeds at present. We must state with exactness what is the power which it exercises now, but which it did not then reach. It is not the right of summoning synods, for the four great œcumenical Councils were all convened by princes; nor, the exercise of power in visitation, for the missi dominici had as large authority as any commissioners since; nor the hearing of appeals, for Constantine and others received them; nor the appointment and deposition of bishops, nor the ruling

84 *Not merely yielded to friendly Princes.*

of questions de fide, nor the use of discipline, nor the regulation of morals among the clergy, for all these things were done by Emperors and their successors, without question or complaint. Limitations enough of Royal authority were proposed afterwards, and sometimes enforced, that is to say, when the struggle for dominion between the ecclesiastical and civil jurisdictions had commenced, which absorbed so much of thought and energy in the middle ages; but of these restrictions earlier times knew nothing.

Again, it is said, that when the Church submitted without question to the assumptions of the state, it was but the concession of certain powers to be exercised by friends and benefactors, and that there was ample compensation in the possessions and securities which were afforded in return. There is no doubt that the benefactions were munificent, and it may have been highly expedient for the worldly prosperity of the Church to concede much, where so much was given. But it is a question not of what is expedient, but of what is lawful. If the functions of legislation and judicature belong, as it is alleged, inalienably to the clergy, and cannot without profanation be exercised by secular persons, then the sin on the part of the Church, which consented to the transfer for so many ages, could not be obviated by the good will of the prince, manifested though it were in grants of immunity and endowment. We cannot make a rule which shall condemn the present generation, without at the same time, and in a higher

degree, condemning the Christians of the early centuries, for there is nothing in the exercise of the Royal Supremacy among ourselves, which can be placed in parallel with some of the acts of Constantine and Theodosius, of Charlemagne and Charles the Bald, to which the Church submitted without a murmur. If it were a divine gift made over to the sole use of ecclesiastics, they had no right to give it up. It might indeed be usurped by others, and they might be obliged to submit, but it would be under protest, and by no act of their own. Responsibility is personal, and cannot be transferred; a trust cannot be made over to others. It would be irrelevant to enquire how it is discharged, if it were not lawfully committed to those in whose hands it is found; it might be well used as by Justinian, or ill employed as by Henry the Eighth, but this would be nothing to the purpose. But, on the other hand, before we condemn those to whom the preservation of the faith is so greatly due, we require a demonstration far clearer than we have yet received, that the powers of judgment and control were given to the clergy on such terms as to be reserved for their sole exercise. We cannot in the mean time believe, that the Church acted unlawfully when, for so long a period, and with the full concurrence of so many saintly persons, it left such large powers in the hands of princes; only let us remember that the lawfulness did not in any way depend on the friendly disposition of the state.

SECTION 9.

THE same admission of Supremacy in the civil power over the ecclesiastical, which is to be traced in the Empire, and in the kingdoms into which it was broken up, will be found in the records of the Anglo-Saxon Church. "The King had the political Supremacy in him, by which he erected and divided bishopricks, and nominated bishops, and summoned councils, and confirmed their proceedings, as he saw cause; but the immediate ecclesiastical jurisdiction was left to the Archbishop of Canterbury, in the first place, and to the rest of the bishops, as to any public acts which related to ecclesiastical affairs, they were not dispatched by particular commissions, but in the parliamentary assemblies; in which the custom was to begin with what related to the Church, and then to proceed to other business."*

In the laws of Ina, king of the West Saxons, near the close of the seventh century, regulations were made for the clergy, for baptism, for the observance of the Lord's day, &c.†

The laws of Alfred, about A. D. 880, recite in the preamble the Commandments of Moses, and refer to the teaching of our Lord and His Apostles. They treat of sanctuary in churches, rules for monasteries, the observance of holidays, &c.‡

* Stilling. Eccles. cases, ii. p. 91. † Spelman, i. p. 182.

‡ Spelman, i. p. 354.

The laws of Canute regard public works, the purgation of priests under accusation, the discipline of those who lived under monastic rule, the regulation of ordeal, the payment of oblation, the times for attending communion, &c. The ecclesiastical and civil ordinances are mingled together, so that we may conclude that they were framed by the joint action of the temporal and spiritual powers, but they were published under the sanction and with the authority of the King, as supreme.*

The laws which pass under the name of Edward the Confessor, provide regulations for sanctuary, ordeal, church dues, &c.† He speaks of himself as “the Vicar of the Highest King, ordained to this end, that he should govern and rule the people of the land, and above all things the holy Church, and that he should defend the same from wrong doers, and root out workers of mischief.” There are some instances on record of exemption from episcopal jurisdiction, said to have been granted by Saxon Kings, as that of Glastonbury by Ina, and of St. Albans by Offa. It must be admitted that these and other charters of the same date, are not deserving of implicit reliance, but they are valuable even if they belong to a later period, because they prove that in what was still a very early age, the Saxon kings were believed to have exercised great power in the Church.

After the conquest, we find William making use

* Spelman, i. p. 539.

† Id. i. p. 624.

of the pope's assistance, so far as he required it, and yet asserting, in very plain terms, his independence of external control. Gregory indeed had blessed his banners, and encouraged his great enterprise, but he refused the submission to the see of Rome, which some German princes rendered at this time, and resolutely maintained the powers over the Church which he had enjoyed in Normandy. He claimed the right of supreme visitation, of receiving final appeals, and of ratifying or annulling all canons. *Primatem quoque Regni sui, Archiepiscopum dico Cantuariensem, si coacto generali Episcoporum Concilio præsideret, non sinebat quicquam statuere aut prohibere, nisi quæ suæ voluntati accommoda, et a se primo essent ordinata.** He exacted aids and knight service from the clergy, who had formerly held in frankalmoigne, he regulated all intercourse with Rome, forbade the acknowledging of a pope during the schism, and subjected ecclesiastical censures to his revision. He nominated to bishoprics and abbeys, and granted exemption to certain places from the ordinary jurisdiction, as for instance, to Battel Abbey, which, as the charter expressed, was "to be free and quiet for ever from all subjection to bishops, and the dominion of any other persons."

Rufus, who was irreligious and immoral in the highest degree, a persecutor of good men, and an oppressor of the Church, was not likely to concede any of the power which descended to him. His ad-

* Eadmer. Hist. Nov. i. 1.

ministration was full of tyranny in church and state : yet it is remarkable that in the disputes to which Anselm was a party, the Bishops sided with the king ; and this can hardly be ascribed to the influence of fear, because we know how boldly they rebuked him for his notorious sins, and especially for keeping the see of Canterbury long vacant.

In the words of Archbishop Bramhall, “ British, Saxon, Danish, and Norman kings, successively, were the only patrons and protectors of the Church within their dominions, and disposed of all things concerning the external regiment thereof, by the advice of their prelates ; called ecclesiastical synods, made ecclesiastical laws, punished ecclesiastical persons, prohibited ecclesiastical judges, received appeals from ecclesiastical courts, rejected the ecclesiastical laws of the popes at their pleasures, gave legislative interpretations of other of their ecclesiastical laws as they thought good in order to their own dominions, made ecclesiastical corporations, appropriated ecclesiastical benefices, translated episcopal sees, forbid appeals to Rome, rejected the pope’s bulls, protested against his legates, questioned both the legates and all those who acknowledged them in the King’s Bench, condemned the excommunications and other sentences of the Roman Court, enlarged or restrained the privileges of the clergy, prescribed the endowment of vicars, set down the wages of priests, and made acts to remedy the oppressions of the Roman Court.”*

* Bramhall’s Works, ii. p. 126.

From the reign of Henry the First, the question of the Royal prerogative assumes a new character. It is inseparably bound up with the history of papal usurpation, by which it was invaded on the one hand, and of different acts by which it was defended on the other. The struggle was maintained with various success, determined chiefly by political causes, such as the weakness or strength of successive governments, until it terminated in the time of Henry the Eighth. During the long intervening period the rights of the Crown were not renounced, and the claims of Rome were not admitted, except during short intervals, when circumstances prevented the assertion of the former, and favoured the progress of the latter. The record of the contest at this time is the history of the Supremacy. There was much to favour the usurpations of the see of Rome. The patronage of Phocas, which, in spite of his atrocious wickedness, had been gladly accepted by the Roman see, increased very greatly its possessions and immunities; while the forgeries, which, in the beginning of the ninth century, gained such a wide acceptance, gave an apparently historical foundation to claims which had been long advanced. The papacy of Gregory the Seventh prepared the way for the assertion of a wider authority. He shook off the yoke of the Emperor, by whom the choice of popes had previously been ratified; he deposed Henry the Fourth, and left it easier for his successors, not only to maintain their independence, but to demand as their right, the

power of annulling or confirming the imperial elections. After the lapse of a hundred years, Innocent the Third not only extended the limits of papal power far more widely within the Church, but obtained also an unprecedented control of secular government. In his own remarkable words, the pontifical authority was compared to the sun, and the regal to the moon. “*Sic regalis potestas ab auctoritate pontificali suæ sortitus dignitatis splendorem, cujus conspectui quanto magis inhæret, tanto minori lumine decoratur, et quo plus ab ejus elongatur aspectu, eo plus proficit in splendorem.*” From the days of Gregory there had been a steady advance, until, in the thirteenth century, all legitimate jurisdiction in the west was either supplanted or weakened by the see of St. Peter. Prerogatives for which earlier times afforded no pretence, were not only claimed by popes, but carried into exercise: such as the receiving appeals from all parts of Christendom, the overruling the decisions of general councils, the deposing of princes, and the bestowal of their dominions as fiefs of the Pope. Adrian the Fourth, in this way, made a donation of Ireland to Henry the Second. In another century we find Boniface changing his style of Patriarch for that of universal Bishop. With equal ambition, but with less ability than Innocent, and under less favourable circumstances, he advanced claims so extravagant, that they provoked opposition, on the side of France especially. It was his misfortune to have for antagonists men so able and resolute, as Edward

the First and Philip le Bel. The power of the popes had reached its culminating point, and from this period began in some measure to decline. It was still, however, great enough to struggle in turn with all the governments of Europe, and to bring itself into conflict with legitimate authority everywhere. In England there were many circumstances which, from time to time, invited its interference. During the war of the succession, maintained between Stephen and the Empress Maud, the papal influence was brought to bear with great boldness. In a council held at Westminster, in 1138, the Bishop of Winchester, who was legate a latere, made a speech in which he affirmed that the clergy had the chief claim of right in choosing a king.* So again, in a council held at Winchester, in 1142, the same legate declared that the King, his brother, having acted contrary to his engagement, and having infringed the liberties of the clergy, they had chosen the Empress to be Queen of England.† In a future synod he again sided with the King, and produced a letter from the Pope, blaming the part which he had taken, but giving entire sanction to his interference. The imposition of tribute, in the reign of John, was the visible token of the subjection to which the civil power was reduced. It is not so remarkable that the payment should have been admitted by one who had so little

* Sir H. Spelman, ii. p. 41.

† Hody, Hist. of Convocat. part 3. page 53.

power of resistance, as that it should have remained until the 17th year of Edward the First. After a long discontinuance, it was demanded by Urban the Fifth, in the 40th year of Edward the Third, when all the laity, supporting the King, united in a refusal, pronouncing the original concession to have been entirely null and void, as having been made without the consent of Parliament. There was, at these two periods, a struggle for the Supremacy between the civil authority and the ecclesiastical; the contrast between the two results, is an indication of the progress which the kingdom had made in the interval, towards its emancipation.

SECTION 10.

THE great contest of the middle ages was that which arose on the subject of lay investitures. They are said to have originated with Charles Martell, and to have been continued by Carloman and Pepin. Charlemagne certainly carried the right of his crown in respect to episcopal appointments, as far as any of his predecessors, but whether by the concession of a synod has been disputed. Investiture was the expression of feudal dominion over the lands of the church. The ceremony is described by Burnet, — “Upon a Bishop’s death, the staff and the ring were sent to the Prince; and when he confirmed the election of the new Bishop, he delivered him the staff

and ring, which put him presently in possession of the temporalities, as the delivery of the Gospel was the symbol of giving him the spiritualities of the Bishoprick. This was early used, for in the life of St. Romanus, Bishop of Rouen, it is said, that Clovis II., having called together some Bishops and Abbots, delivered him the pastoral staff. The ring was at first used as a common symbol of marriage among the Goths and Lombards; and the care of a See being generally compared to the marriage bond, this came to be likewise one of the symbols of the investiture.”* Under these external forms very substantial rights were conveyed. When the church grew rich through the bounty of princes, the preferments, which had once been little coveted, on account of the scanty payment provided for the required duties, became the object to which the efforts of popes began to be directed. It was the great purpose of Gregory VII. to wrest the right of investiture from lay hands. His epistles are filled with this subject, and he urges it on the ground of simony practised by secular patrons, and also because the spiritual judgment to be exercised in the case of persons presented, would be exercised too late, if they had previously been admitted to the enjoyment of their temporalities.† A long and ruinous conflict arose between the Empire and the see of Rome, which involved the bitter fac-

* Rights of Princes, p. 174.

† Thomass. vet. et nov. Eccles. dis. p. ii. l. ii. c. 20.

tions of Guelf and Ghibelline, and after years of desolating war, a compromise was made by which the election of bishops and abbots, was left to the chapters and the monks, and homage appointed to be paid to the sovereign, who admitted the prelate to his possessions “*per sceptrum*,” and not as formerly “*per annulum et baculum*,” which it was contended implied the conveyance of spiritual functions. A Lateran council had pronounced excommunication against all who should receive lay investiture, and a council held at Clermont at the close of the eleventh century, at which the pope was present, forbade bishops even to render homage to princes for their preferment. The right which had been exercised by his predecessors was extorted from Philip I. of France, whose evil character made him less able to offer resistance. In the Council of Poitiers, A. D. 1078, and more conclusively in that of Rheims, A. D. 1119, the intervention of lay authority was interdicted under pain of excommunication. In some parts of Europe the success of the ecclesiastical power was less complete, and princes retained in their hands considerable power over bishoprics and abbeys. The elections were not to be made, until their sanction was conveyed by special writ, they recommended the person to be chosen, and they retained the custody of the temporalities during the vacancy of the see. In England, the question of investiture was debated with much violence on both sides ; its importance as involving the right of Su-

premacv was thoroughly understood ; it was for the time the point on which the rival claims were concentrated. William the Conqueror, and William Rufus had maintained their prerogative, and it was on this ground that the quarrel with Anselm had its origin. Henry I. refused to yield what he asserted to have been from time immemorial, the right of his crown. In a letter to Pope Paschal II. on this subject, he asserted that if he should yield the point “ neither his optimates nor the commonalty of England would permit it. Notumque habeat sanctitas vestra, quod me vivente, Deo auxiliante, dignitates et usus Regni Angliæ non minuentur.” Et si ego, quod absit, in tantâ me dejectione ponerem, optimates mei, immo totius Angliæ populus id nullo modo pateretur.”* On the other hand, the Pope wrote to Anselm, “ That it was an unwarrantable concession which was asked ; that he could not yield the point of investiture, with any consistency of duty to God ; that if the pastoral staff, which is an emblem of spiritual authority, were delivered by lay hands, no privilege would be left to the bishops,” &c.† The king sent an agent to the court of Rome, who told the pope that his master would hazard his crown rather than part with investiture. To which Paschal replied that he would rather lose his life than grant what was demanded. The king tried to stand to his purpose, but circumstances were unfavourable to

* Hody on Conv. p. 188.

† Collier, i. 288. id. 292.

him, and he was compelled to yield. His ministers were excommunicated, and he himself was threatened; he had to fear the claim of his nephew, as well as the opposition of the King of France, and the Counts of Anjou and Flanders; while on the other side his sister, the Countess of Blois, terrified on account of his spiritual danger, urged him to compliance. In 1107, the bishops, abbots, and temporal nobility were convened at London, and here the king solemnly relinquished the giving investiture by the ring and pastoral staff. Anselm likewise declared on his part, that he would never refuse consecration to any person on account of his doing homage to the king. It was a very great triumph of the ecclesiastical power which was thus obtained, and the effect of it was long felt.

SECTION 11.

ANOTHER subject of strife which existed for some centuries, was the exercise of legantine power. It was first claimed by Alexander II. in 1062, in the form which it afterwards retained, having been previously exercised only on such occasions as might appear to be warranted by the canons of the Council of Sardica. It now became a demand of the Pope to exercise universal visitation as the universal pastor of the Church. The authority of the legate was almost unlimited; he was not so much an ambassador

as a commissioner and vicegerent; he claimed to hold councils, to publish canons, to depose Bishops. The office was generally conferred on the Metropolitan, or on some eminent Bishop. But this jurisdiction was suspended by the arrival of a legate a latere, who though he might be no more than a deacon, exercised superior control over all persons of episcopal rank. Legations from Rome were almost as rare as appeals to the Pope before the Conquest. In 1100, we read that "Guido, Archbishop of Vienne, came into England with a commission from the Pope to be legate in the whole island. This was looked upon as an authority *primæ impressionis*, and every body was much shocked at it; it being a thing never heard of, as Eadmer speaks, that any person should represent the Pope in England excepting the Archbishop of Canterbury. For this reason, Guido's character was universally disowned; neither was he allowed to exercise it in any one instance."* In 1116, the Abbot of St. Sabas, coming with the same character and commission, was refused admittance into the kingdom. In 1119, the Pope granted the King all those ecclesiastical privileges which his father had enjoyed, either in England or Normandy; and particularly, that no foreign legate should be sent to England, unless the King should desire it, upon some unusual emergency.† In 1125, the Pope being in more favourable circumstances than his predecessors,

* Collier, i. 280.

† Collier, i. 312.

took advantage of the anxiety in which the King was involved, and sent Cardinal de Crema as his legate, who assembled a synod. The Archbishop not being willing to acknowledge the authority of the legate, which yet he did not venture to deny, inserted in his summons the words, “ordinatione, nostrâque conniventiâ,” as though it were not contrary to his will. When the Cardinal took the place of the Archbishop in the cathedral, and wore the episcopal habit, though he was but a presbyter, the sight, according to an historian of the time, was new to the people, and was an indication how greatly the ancient liberties of the English Church were depressed. For it was notorious that from the time of Augustine to that of the present Archbishop, all were looked on as Primates and Metropolitans, and were never brought under the jurisdiction of the Roman see. In the following year Corbel obtained for himself a legantine commission, being the first Archbishop of Canterbury who had held the office, and in this character he presided at a council held in Westminster, A.D. 1127.* The Pope willingly consented, because the authority which the Archbishop exercised also as Metropolitan would now seem to be derived more evidently from the see of Rome. And from this time those who occupied the see were generally styled *legati nati*, until Cranmer renounced the title. In 1237, Cardinal Otho came as legate by invitation of the King, although the barons were greatly of-

* Spelman, ii. 35.

fended, and many of the Bishops are said to have remonstrated. He was a person of high character, and the constitutions which he published* had very important influence, and have always been held of high authority by canonists. In 1268, Cardinal Othobon came as legate from Clement IV. In a council at which he presided canons were framed which were long received as the rule of discipline in the English Church. During this time, partly by the personal influence of the legates who were sent, and partly by the concessions which were made by the crown, great opportunity had been afforded for the encroachment of the papal authority. Yet in 1429 we find Chichely protesting that "this commission of legate a latere might prove of dangerous consequence to the realm. That it appeared from history, and ancient records, that no legates a latere had been sent into England, unless upon any great occasion. That before they were admitted they were brought under articles, and limited in the exercise of their functions. Their commission likewise determined within a year at farthest, whereas the Bishop of Winchester's was granted for life."† In the Council of Basil, the same Archbishop contended courageously for the liberties of the English Church. An authority had been suffered to grow up, which proved a powerful antagonist to that of the sovereign, and contributed essentially to maintain the Roman influence.

* Spelman, ii. 221.

† Collier, ii. 655.

SECTION 12.

THERE were many things favourable to the purposes of the Roman court, of which its policy was never slow to take advantage. The Conqueror's wish to depress the native clergy, and to aggrandize foreign prelates, led to the removal of Stigand, and the substitution of Lanfranc, who helped greatly to establish an Italian interest. His successor was of the same nation, and Eadmer, who was placed over him by Urban, exercised so great an influence, that in the words of William of Malmesbury, "cum cubili locasset, non solum sine præcepto ejus non surgeret, sed nec latus inverteret." When Anselm contended against the King, and resisted the voice of the English Bishops, it was not, as it has been untruly represented, a struggle for the freedom of the Church that he was maintaining, but for the subjugation of the realm to an intolerable tyranny. The fear of his brother Robert, who had returned from the East with a great reputation, prevented Henry from making any effectual effort for the emancipation of his crown. The barons were not to be trusted, and the very seamen were ready to transfer to his competitor the fleet which had been raised to oppose him. Stephen for the same reasons was powerless against the Pope; and the contest with Becket in the succeeding reign ended disadvantageously for the crown. Few deserved less the honour which his memory has re-

ceived. His violence and faithlessness would have been better appreciated if he had not been resolute in advancing the projects of the Bishop of Rome. The manner of his death promoted his object more than all the acts of his life. When John succeeded to the throne, and it was never occupied by a worse king, or a more wicked man, in addition to his usurpation he alienated the Bishops and clergy, as well as his lay subjects, by his harsh and arbitrary government, and made the interference of the ambitious Pope who was his contemporary, very easy. In becoming a feudatory, he fell into the lowest degradation. It was the time in which the papal supremacy was triumphant, and the Royal prerogative was all but extinct. His successor began his reign under the sanction of the Legate, and rendered homage for his kingdom. He permitted the Pope, whose assistance he required, to make levies upon the clergy, and lent his castles for the imprisonment of defaulters. It was one of the complaints published by the Emperor, that money had been raised in England under the authority of Cardinal Otho, and with the King's consent. In return, the Pope by his bull obliged the Bishops to convene their clergy, and raise money for the Crown. In spite of the strong remonstrances which were made against the foreign interposition, the same was done in 1255, and again in 1267. Even Edward I. who used strong means for limiting ecclesiastical authority, was yet compelled by the necessities of his condition, and espe-

cially by his expensive wars, to accept the assistance of the Pope in gathering contributions from the clergy in 1272 and 1292; and even after the harsh and unjust measures which he used towards the ecclesiastical body, he again obtained a grant of tenths by the Pope's co-operation; and in requital, he granted the revenues of Canterbury, during the vacancy of the see, to the Court of Rome. These acts seem very inconsistent with the vigour of his government, and the plainness of his declarations from time to time, and we can only explain the contradiction, by the advantage which was taken of favourable circumstances for encroaching on the royal prerogative, and especially by a Pope so determined as Boniface VIII. to advance the prerogative of his see. Through his whole reign Edward II. collected contributions from the clergy by the same authority. Even Edward III. in 1330 took a share with the Pope in an ecclesiastical levy. And so for centuries the struggle went on. Sometimes the Papacy was weak through schism, as in the time of Henry IV. and Henry V., in consequence of which, encroachment was in a measure checked. Sometimes the sovereign was compelled by the badness of his title to compound for the support of the Bishop of Rome by making many concessions. Even the stout heart of the English nation could not always sustain its opposition against both. It is instructive to observe, that when the Royal prerogative failed them by desertion,

they had no other defence. The wars of York and Lancaster for a long period made any combined resistance impossible, and of this the Popes were not slow to take advantage.

SECTION 13.

ANOTHER cause which had great influence in the increase of papal authority in England was the study of the Canon law, which is the voice in which Rome gives utterance to its most unreasonable claims, and among its advocates there have been none either abler, or more unhesitating, than those who have made proficiency in this learning. The corpus juris canonici consists of rules taken from Scripture, from the Fathers, from general and provincial Councils, and from the decrees of Popes. Gratian, who was a Benedictine monk, compiled his "*Decretum seu concordantia discordantium Canonum*" in the twelfth century. The Decretals were published by different Popes. The Clementines were collected by Clement the Fifth, and published by John the Twenty-second. The Extravagants were twenty constitutions of the same Pope; vagantur extra corpus collectionum Canonum. These together constitute the Canon law of the Roman Church. Much of the learning which was to be found in the ages succeeding the conquest, consisted in the knowledge of law. The clergy especially devoted themselves to it, so that in the

words of a contemporary historian, “nullus clericus nisi causidicus.” The judges were created from the same body for the most part, and even the inferior offices in the courts were filled by ecclesiastics.* The discovery of Justinian’s pandects in 1130, introduced the study of the civil law, which was brought into England on occasion of the disputes between the Archbishop of Canterbury and the Bishop of Winchester. The cause was argued by advocates from Rome, who brought their own law. It made much progress under Archbishop Theobald, who was by birth a Roman. Becket, who had been his chaplain, was sent by him to Italy to gain the knowledge of this new jurisprudence. It became acceptable to those who were often strangers to the language and constitution of the country, while it was unpopular with the native English, and sometimes forbidden by authority. Hence two parties were formed, the one of which adhered to the canon and civil law, the other clung to the laws of Edward the Confessor. “Nolumus leges Angliæ mutari,” were the words of the earls and barons in the parliament at Merton, when it was proposed by the Bishops that in a particular case the common law should yield to the canon. In the year 1135 the Decretals of Pope Gregory the Ninth were brought to England, in consequence of the command that they should be read, and promulgated through the world. The king

* Blackstone, i. 16.

issued his writ forbidding them to be received, or to be studied in any of the schools.* When the clergy were not able to abolish the use of the municipal law, they gradually withdrew from the temporal courts, and some episcopal constitutions were published, forbidding them to appear as advocates in foro sæculari;† nor did they long continue to act as judges, because they would not take the oath of office which was then required, that they would in all things determine according to the law and custom of the realm. The advocates of Rome were not only formed in this way into a distinct party, but they were also furnished by these new laws with the knowledge of the amount of papal claims, and the arguments by which they were to be maintained.

We must not overlook the influence of the mendicant orders, who became considerable in England during the thirteenth century. They were exempt from episcopal control, and were empowered to preach, and to hear confessions without regard to the rights of the parish priest, or to the control of the ordinary. Being fortified with foreign authority they made great inroads on ecclesiastical discipline, bringing both Bishops and clergy into contempt. The privileges which they enjoyed were indeed in direct contravention of the Canons of the fourth Lateran Council, but they formed only the stronger bond of attachment to the service of the Roman pontiff, and were repaid

* Hody on Conv. p. 314.

† Blackstone, i. 19.

by entire submission to his will, and the most strenuous assertion of his supremacy. Among them were many eminent scholars in an unlearned age; many were advanced to considerable preferment in the Church, and their vow of poverty did not prevent them from accumulating large possessions. Their independence of the authority to which other ecclesiastics were subject, increased both their willingness, and their opportunity to advocate the foreign jurisdiction to which they were attached. John Peckham, who was Archbishop of Canterbury in the reign of Edward the First, being himself a friar of the Franciscan order, was a vehement supporter of the papal power, and would probably have promoted it greatly if he had not been prevented by the vigour of the King's government.

SECTION 14.

THE Royal prerogative during a long period never relinquished, but as we shall presently see, asserted from time to time, was by the combination of these causes greatly impeded. The usurpations of Rome had been the subject of continual resistance. It would indeed require very unimpeachable evidence to persuade us that a great and high spirited nation could submit readily to the dominion of a Latin Bishop, who had nothing to engage either respect or affection; whose policy was as unworthy as his claim

was untrue. Quiet submission there certainly was not; history is filled with the record of contentions between the civil and the ecclesiastical authorities, or in other words, between those who maintained the Supremacy of the Pope, and those who held by the Supremacy of the Crown; for we must never lose sight of the fact that it is between these two that the struggle has ever been: on one side, was the Royal Supremacy gradually modified by the representative system, never relinquishing its claim of power in ecclesiastical things; on the other, the subjects and partizans of the papacy endeavouring, as opportunity offered, to advance not an independent, but a rival and antagonist jurisdiction. The advantage was sometimes with the one, sometimes with the other; a disputed succession, or an unpopular prince, or an expensive war, were the occasions which the Pope used for aggression, but in turn he was sometimes compelled to recede from his acquisitions. It was only by slow degrees that a power could be subdued, which had grown up by force of circumstances, in spite of resistance and complaint, and which was so artfully consolidated. The jealousy which subsisted between the clergy and laity, and which still makes itself felt though the excuse is gone, originated in the closer alliance which the former maintained with an alien, and often hostile power. Nothing can be less like the truth than to represent, as some have lately ventured, that the English people for nearly a thousand years lived under the peaceful dominion of the Roman pontiffs, rejoicing in the blessings and spiritual care

which came from the see of St. Peter, until by a sudden madness they flung off this gracious control, and deprived themselves of the fatherly rule, under which they had for generations been growing in spiritual life, and bearing the fruits of holiness. It is a broad and palpable misrepresentation of the witness borne by history, both in respect to the character of the papal government, and the willingness with which its interpositions were received. Instances were not wanting of bold remonstrances offered by various persons, even ecclesiastics of station and high repute, against the exactions and immoralities of Rome. Thus Grossteste, the learned and excellent Bishop of Lincoln, in 1253 wrote a letter of rebuke to the Pope, which was received with so much indignation that the Pontiff was about to command the King of England, as his vassal and servant, to inflict some exemplary punishment on the writer: he was only restrained by the more prudent counsel of the Cardinals, who represented that the charges were undeniably true, and that the character of the Bishop was preeminent for learning and goodness.* It is said that dying soon afterwards, he employed his last moments in warning the bystanders against the corruptions and wickedness of the see of Rome. Again we read of Sewal, Archbishop of York, in the middle of the thirteenth century, that "his probity, and zeal embroiled him with the court of Rome, and involved him in a great deal of trouble. He had too much

* Collier, i. p. 467.

conscience to digest the immoderate exactions of that court; and wrote a sharp remonstrance to Pope Alexander the Fourth upon this subject. His Holiness was so disgusted with the censure of his conduct, that he endeavoured to lessen the Bishop's authority, to distress him in his fortune, and sink his credit. At last, he proceeded to an open revenge, and had him solemnly excommunicated. It seems, the Archbishop had taken the freedom, amongst other things, to tell him, that when our Saviour commissioned St. Peter to feed His sheep, He did not give him any authority either to flay, or eat them. Another ground of the Pope's displeasure was the Bishop's refusing to admit unqualified Italians to any livings in his diocese. When he was upon his death bed he complained of the Pope's injustice, and made his appeal to Heaven."* Even Primates of the English Church, from Archbishop Edmund to Chicheley, were found raising their voices against the evils which came upon it from those whose administration was as corrupt, as their authority was ill obtained. In the French Church, there had been similar expressions of dissatisfaction often repeated, and having their commencement even before the days of Hincmar, the Archbishop of Rheims, whose name will long be remembered by his bold answer to the threats of the Pope, "*si excommunicaturus veniat, excommunicatus abibit.*"

* Collier, i. p. 467.

SECTION 15.

BUT the best and most unimpeachable evidence is that of the laws which were made, from time to time, against the successive aggressions of the Bishop of Rome. They began early, and were repeated often until, in the reign of Henry the Eighth, they were consolidated, and duly enforced. On the subject of the King's personal character, not much difference of opinion is likely to exist; but we must be on our guard against the sophism by which we should be led to condemn the legislation of his time, through hatred of his vicious life. It was not from the influence of his capricious temper that the enactments of the period had their origin, but from causes which had been at work for a very long period, and which were at length producing their natural effect. That a whole nation should abandon the faith which they loved, at the will of one man, and cast off the spiritual dominion under which they, and their forefathers, had lived in quietness and contentment, is so extravagant a suggestion that it would never have been proposed, if any other hypothesis could have explained the facts of the case, without giving up the cause on the Roman side. The strong self-will of the King, and the influence of personal motives, doubtless made him more determined in following his purpose. But the statutes of his reign were no more than the consummation of the long struggle be-

tween the usurpation of the Pope, and the Supremacy of the Crown. The resolute temper of the King gave life and operation to acts which had been passed long before, but which had neither been repealed, nor vigorously executed. The statutes of the kingdom for some centuries preceding the era of the reformation, bear witness both to the amount of encroachment, and the resistance which was offered. Something more was wanting, and this was now supplied: we shall find by an examination of the acts relating to the Church framed during this reign, and nothing less will suffice, that they were anticipated at previous periods in all but the foresight which provided for their enforcement, and the vigour with which it was carried out. That which had often been previously attempted, and by various causes defeated, was now done effectually, and once for all. The opinion of Lord Coke, and of the great lawyers who agreed with him, in regard to the ancient rights of the crown, has been lately questioned, as if the instances which he cited were not sufficient to sustain the breadth of his conclusions. Let us look then to the acts themselves, and see how far they are confirmatory of laws previously enacted, and principles generally admitted.

The 21 Henry VIII. c. 13, for “*the restraint of pluralities*,” forbids the procuring licenses, or dispensations from Rome for holding benefices beyond the prescribed limit, and was really the first denial of the Pope’s Supremacy in this reign, but we may pass it

by, because it was soon followed by others which spoke in stronger, and more decisive language.

The 23^d Henry VIII. c. 20. is entitled "*an act concerning restraint of payment of Annates to the See of Rome.*" It is stated in the preamble "*that great and inestimable sums of money have been daily conveyed out of this realm, to the impoverishment of the same; and especially sums of money as the Pope's holiness, his predecessors, and the Court of Rome by long time, have heretofore taken of all and singular those spiritual persons which have been named, elected, presented, or postulated to be Archbishops or bishops within this realm of England, under the title Annates, otherwise called first-fruits; which annates, or first-fruits, have been taken of every Archbishopric, or bishopric, within this realm, by restraint of the Pope's bulls,*"* &c. It is stated that no less than one hundred and sixty thousand pounds had been paid since the second year of Henry the Seventh, under these pretexts. In future it is enacted that no more than certain regulated sums shall be paid, and provision is made for the amicable settlement of the question with the Roman Chamber. But the Pope not having returned any answer, the provisions of the present statute were confirmed by a subsequent act, (25 Hen. VIII. c. 20.) and the future payments to the Pope entirely abolished.

The invention of annates is generally ascribed to

* Stat. at Large, iv. p. 246.

John XXII. It was a sum paid for bulls of confirmation. "By the term," says Collier, "we are to understand a year's revenue, or tax upon the revenue of the first year of a vacant benefice. As to the time when this practice began, it is observed, that ever since the twelfth century, some Bishops or abbots have, either by custom or particular privilege, received annates of the benefices belonging to their patronage or jurisdiction."* The Popes inveighed against the payments which were made of certain sums to secular patrons, on the presentation of clerks to benefices, and yet they have been charged by many learned men, of their own communion, with the sin of simony, on the very same ground. Their claim to make exactions from the clergy had as little foundation as can well be imagined. "Quidam," says De Marca, "jus illud imperandi tributa clero, quod summo pontifici competere aiunt, ex eo deducunt quòd summam obtineat auctoritatem in bona ecclesiastica; adeo ut si eis malè utatur, peccet quidem graviter, sed tamen dispensationem eorum fore validam. Opinio hæc, quæ proprietatem bonorum ecclesiasticorum summumque in ea imperium pontifici Romano asserit, exorta est ævo Bonifacii octavi auctoribus quibusdam adulatoribus."† This is a doctrine so obviously sanctioned for the aggrandisement of the see of St. Peter, that it was not likely to escape general opposition. In the French Church it was

* Coll. i. p. 503.

† Concord. l. vi. c. 12.

never admitted. The second Canon of the Council of Chalcedon had forbidden the taking money for ordination, or Church preferment, under pain of degradation, and it decreed that the ordination or promotion so obtained should be null and void. In the time of Justinian, the custom arose of taking certain fees on the consecration of a Bishop, which led gradually to the abuse which had reached its height in the sixteenth century. The collection of this impost was forbidden by Parliament in the 35th Ed. I. Among the articles presented by the Earls and Barons at this time, we find a remonstrance against the Pope's claim of the first-fruits of some vacant benefices, as a thing never heard of before, and as being very prejudicial to the King, Church, and kingdom.

In the Parliament of 1376, complaint was made "that the impositions of the Pope were intolerable: that by the death and translation of Bishops he sometimes extorted five times the yearly revenue out of a single see. That the cardinals, and other foreigners who resided at Rome, were provided with several of the best preferments in the Church under a bishoprick. That twenty thousand marks a year was drawn out of the kingdom this way; and that the Pope's agents collected a no less sum for the use of his Holiness. That this very year, the court of Rome had laid their hands upon the first-fruits of all the benefices in England."* In the act

* Collier, i. 563.

passed in 1405 (6 Hen. IV. c. 1.) penalties were enacted against those who should pay more than the customary amount. The preamble uses language at least as strong as any which was employed in the next century, "For the grievous complaints made to our Sovereign Lord the King, by his Commons of this parliament, holden at Coventry, of the horrible mischiefs and damnable custom which is introduced of new in the Court of Rome, that no parson, abbot nor other, should have provision of any archbishopric or bishopric, which shall be void, till that he has compounded with the Pope's Chamber, to pay great and excessive sums of money, as well for the first fruits of the same archbishopric or bishopric, as for other lesser services in the same court, and that the same sums, or the greater part thereof, be paid before hand, which sums pass the treble, or the double at the least, of that that was accustomed of old time to be paid to the said Chamber, and otherwise, by the occasion of such provisions, whereby a great part of the treasure of this realm hath been brought and carried to the said Court," &c. These payments were forbidden by the Council of Constance, in 1414, and by the Council of Basil, in 1431. Whoever remembers also the words in which St. Chrysostom condemned the same form of ecclesiastical covetousness, many centuries before, will hardly think that there needs further justification of the Act which finally put an end to this exaction.

SECTION 16.

THE 24 Hen. VIII. c. 12, is an Act "*for the restraint of appeals.*" The preamble asserts, in memorable words, the greatness and independence of the realm; "*Where by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed, that this realm of England, is an empire, and so hath been accepted in the world, governed by one supreme head and King, having the dignity and royal estate of the imperial crown of the same; unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and temporalty, been bounden and owen to bear, next to God, a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative and jurisdiction, to render and yield justice, and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates and contentions, happening to occur, insurge, or begin within the limits thereof, without restraint, or provocation to any foreign princes or potentates of the world.*"* And in the following section, there is express reference to former statutes made for the same

* Stat. at large, iv. 257.

purpose as the present, “ *And whereas the King, his most noble progenitors, and the nobility and commons of this said realm, at divers and sundry parliaments, as well in the time of King Edward the First, Edward the Third, Richard the Second, Henry the Fourth, and other noble Kings of this realm, made sundry ordinances, laws, statutes, and provisions for the entire and sure conservation of the prerogatives, liberties and pre-eminences of the said imperial Crown of this realm, and of the jurisdiction spiritual and temporal of the same, to keep it from the annoyance, as well of the see of Rome as from the authority of other foreign potentates, attempting the diminution or violation thereof, as often and from time to time, as any such annoyance or attempt might be known or espied.*”

The claim of the Bishop of Rome to have the hearing of appeals was founded on a gross fraud, against which Augustine and the African Church protested. It reached at first only to the Roman patriarchate, though by degrees it extended through the entire Western Church. In England it was very early resisted. “The Bishops and Barons,” writes Stillingfleet, “told Anselm, in William Rufus’ time, it was a thing unheard of, and contrary to the custom of his realm, for any one to go to Rome without the King’s leave, which is after explained by way of appeal: Anselm made but a shuffling answer to this, although he had sworn to observe the customs of the realm, and he could not deny this to be one; but he pretended it was against St. Peter’s authority, and there-

fore could not observe it; for this were, saith he, to abjure St. Peter. From whence I infer that the custom of the realm was then thought by Anselm to be inconsistent with the Pope's authority; for whatever they talk of St. Peter, it is the Pope they mean."* And about the same time "the Pope complained grievously, that the King would suffer no appeals to be made to him; and that due reverence was not shewed to St. Peter in his kingdom; and that they ended ecclesiastical causes at home, even when Bishops were concerned; and very learnedly quotes the Decretal epistles against them." Henry, Bishop of Winchester, in the reign of Stephen, is said to have first established the custom of appeals to the Pope; and the King himself being called to answer in the Council of Westminster, for the imprisonment of two Bishops, declared his intention of appealing to Rome. In the reign of Henry the Second, the Pope complained of the restraint of appeals, and the want of reverence for the chair of St. Peter. The constitutions of Clarendon, among other objects, endeavoured, by the fourth and eighth of its articles, to prevent the removal of causes out of the kingdom. Their subsequent abrogation does not at all invalidate the argument to be drawn from this enactment: it only proves that, in times of great disorder, the Pope took advantage of the weakness of the government to procure its repeal.

* Ecclesiast. cases, ii. p. 187.

By the 27 Ed. III. c. 1, it was provided, "That any who sued either beyond sea, or in any other court, for things that had been sued, and about which, judgment had been given in former times, in the King's courts, were to be cited to answer for it in the King's courts within two months; and if they came not, they were to be put out of the King's protection, and to forfeit their lands, goods, and chattels to the King, and to be imprisoned and ransomed at the King's will." The terms of this statute are as strict as of that which was passed on the same subject two hundred years later, and the penalty as severe. It was confirmed by another law in the same reign, and various other securities were provided as they were found needful, until the great statute of præmunire, 16 Rich. II. c. 5, gave the most effectual check to the exercise of foreign authority. No more need be added to prove that the statute of 1532 contains nothing new, when it affirms that all causes determinable by spiritual jurisdiction, should be judged in the King's courts; nor when it forbids any judgment or sentence to be procured from the see of Rome.

SECTION 17.

THE 25 Hen. VIII. c. 19, is entitled, "*The submission of the clergy, and restraint of appeals.*" It recites in the preamble that "*the King's humble and*

obedient subjects, the clergy of this realm of England, have not only knowledged according to the truth, that the convocation of the same clergy is, always hath been, and ought to be assembled only by the King's writ, but also submitting themselves to the King's majesty, have promised in verbo sacerdotii, that they will never henceforth presume to attempt, allege, claim, or put in ure, or enact, promulge, or execute any new canons, constitutions, ordinance provincial or other,"

&c.* It enacts, in the first section, that the clergy shall not make constitutions, or ordinances without the King's consent, and that convocation shall not meet without the authority of a royal writ;† and in the fourth section, that appeals from the court of the Archbishop shall be heard in the Court of Chancery.‡

We must examine these important enactments hereafter, under distinct heads. It may suffice for the present, to observe that the submission of the clergy was neither a hasty nor an inconsiderate measure. Bishop Kennett affirms that it was not, as it has been generally supposed, through fear of the consequences of the *præmunire*.§ No doubt they had incurred this heavy penalty for their acknowledgment of Wolsey's legantine power, as well as for many other acts which had been forbidden by statute: but a grant of money had been made some time since by convocation, and accepted by the King as the

* Stat. at Large, iv. p. 283.

† See chap. 4.

‡ Chap. 2.

§ Eccles. Synods, pp. 47, 48.

price of their pardon. They proved themselves ready to maintain what they believed right, as for instance when they refused to include the old canons among those which were to be no longer executed without the royal consent. "The King perceiving the matter stick, sent six noblemen to them, to try to overbear their constancy : but it seems their courage did not desert them upon this occasion ; for after an hour's conference with these Lords they returned this final answer, That they could not submit to the clause prescribed, not to attempt, claim, or put in use, any of the old canons, without leave from the Crown." * We may conclude that they had in the present instance no tenable ground for resistance. We may add that the act in question proceeded at least as much from the hostility of the commons, as from the autocratical spirit of the King, and of this there had been many previous tokens. As early as 1404 they had proposed to furnish means for carrying on some expensive wars which were impending, by confiscating ecclesiastical property.† The parliamentary rolls of this and the following reigns are full of complaints against the clergy. About the present time there were tokens that this unfriendly feeling still subsisted. In 1539 we read that "several bills were brought in for relief, against the exactions of the clergy : one was to moderate their demands for probate of wills ; and another for the regulating of mor-

* Collier, ii. 69.

† Ibid. i. 620.

tuaries ; they likewise complained of the plurality of benefices, of non-residence, and churchmen's being farmers of lands. This business did not pass without satirical remarks upon the mismanagement of the clergy :”* and again in 1532, “The Commons complained of the clergy's claiming a privilege of making canons by their sole authority,” and they were charged, “with falling foul upon the constitution, and making canons in contradiction to the laws of the realm : that these ecclesiastical regulations were published in a foreign language, and passed without the assent of either the lay-subjects or the crown : that several of these provisions of the Church pressed upon the prerogative royal, and were oppressions upon liberty and property, that they reached to the interdiction upon lands and estates : and that the breach of the canons being menaced with excommunication, the terror of this censure put some of the lay-subjects to a stand, made them timorous, and unresolved in their obedience to the king and constitution.”* It was in reality the consummation of a long struggle for legislative superiority between the Church and the State, in which the clergy had been supported by the foreign authority to which they could no longer have recourse. This may explain why it was that the act passed with only faint remonstrance, and that no efforts were subsequently made for its repeal. It was not the independence

* Collier, ii. 66.

† Ibid. ii. 66.

of the English Church which was in question, but the substitution of the Royal Supremacy, which was a right, for that of the Pope, which was an usurpation. Sir Edward Coke affirms "that the clergy were never assembled or called together at a convocation but by the King's writ."* Archbishop Wake certainly cites instances, † in which they were thus convened independently of the crown, but then it was by an authority which the Archbishop unlawfully derived from the see of Rome.

SECTION 18.

THE 25 Hen. VIII. c. 20, is entitled "*an act for the non-payment of first-fruits to the bishop of Rome.*" It ratifies the previous statute, and abolishes the payment altogether, but it is chiefly occupied with appointing the way of electing Archbishops and Bishops, by deans and chapters, in obedience to the recommendation of letters missive from the King. This was no more than the maintenance of an ancient right, which we shall have occasion to examine more minutely in another place.‡ There was no instance in which papal usurpation had made greater encroachments on the Supremacy of princes, and on the rights of the Church, than in what related to benefices. Various Popes had advanced the claim.

* Instit. part iv. p. 323.

† State of ch. p. 81, et seq.

‡ See chap. 3.

Innocent the Third reserved to the see of Rome the right of authorizing all translations, resignations, and depositions, which his successors maintained. Thus we find Henry the Sixth writing to Eugenius the Fourth, for permission to remove the bishop of Norwich to Lincoln. “Boniface the Eighth, in the time of Ed. I. first started the doctrine of the pope’s universal and absolute dominion in beneficiary matters; but he was vehemently opposed. But his successors meeting with fairer opportunities, and being upon better terms with princes, by degrees set up and exercised this kind of feudal authority in benefices. And as the consequence of this doctrine the Pope challenged the first fruits, as a year’s profits on the beneficiary fee to the chief lord.”* The Popes, as lords paramount, seem to have regarded Bishops as their tenants in capite, and the inferior clergy as their vassals: and to have claimed a right over spiritual preferments, as lands were held of temporal princes. The very name of benefice, by which parishes were known, seems to have been borrowed from lay fees. As these were conferred by the delivery of corporal possession, so spiritual benefices, which at first were all donative, were afterwards received by investiture, and induction. As lands escheated to the lord on defect of legal tenants, so benefices lapsed to the Bishop in case of non-presentation by the patron.† Annual tenths answered to

* Stilling. Eccl. cases, ii. p. 53.

† Blackstone iv. c. 8.

reserved rent, and first-fruits to the year's profit of an heir's estate claimed by the lord. Nothing was more natural than the rise of such a system, and nothing more utterly unlike the pattern which the Scriptures, or the history of the primitive age presented. Clement the Fifth claimed an independent right to present to all ecclesiastical benefices as belonging to the plenary power of his see. The canonists maintained that the Pope had the sole right of bestowing preferments, and that, whatever patronage others might exercise, was derived from his grace and permission. "*Salva in omnibus Romani pontificis potestate, ad quam ecclesiarum, personatum, dignitatum, aliorumque beneficiorum ecclesiasticorum plena, et libera dispositio, ex suâ potestatis plenitudine noscitur pertinere.*"* Benedict the Twelfth, made reservation to himself of all preferments void by promotion, which as it was said, answered to the change of life in a lease, on which the superior lord gains an advantage. The Pope had also the dispensing power, so that canons forbidding pluralities could be neutralised. At his pleasure he could give on promotion an exemption from the avoidance of previous preferment, so that either way the avarice of the Roman court was gratified, for the bull which enjoined that no one who possessed a benefice, should hold a second, provided also that the preferment vacated should be at the disposal of the Pope. He

* Clement l. ii. tit. 5, cap. 1.

claimed also the right of presenting to all benefices which should become vacant, while the incumbent was in attendance at Rome.

Papal provisions were the previous nominations to such benefices as were about to become void, by the promotion of the incumbents to bishoprics or abbeys. The term was afterwards applied indiscriminately to any right of patronage, possessed or usurped by the Pope. It happened usually that before vacancies could be reported at Rome, they were filled up by those to whom the patronage belonged. Reservations therefore were adopted, by which notice was given before the benefice became void, that when the vacancy should occur, no one should present, and that the presentation, if made, should be nullified.

Commendams were invented for the same object. When benefices became vacant for which the patron or ordinary could not immediately provide, which often happened through plague or war, it was committed *pro tempore* to the care of some one who undertook the charge of it during the vacancy, but without enjoying the profits; and this was held by canonists to be no infraction of the law which forbade pluralities. The period during which Bishops were allowed to commit the charge of a second Church to any one, was limited to six months; but the Popes did not bind themselves by any such restriction, and commendams were granted for life, with the full enjoyment of the profits, sometimes to persons who were canonically disqualified for the cr-

dinary holding of any preferment, sometimes to persons who were already in possession of a benefice. The letter of the law might be maintained in this way, but its spirit was grossly violated. In England great temptation was offered to the adherents of the Roman court by the numerous valuable preferments which were attainable. The power of presentation was gradually assumed, at first by recommendatory letters, or by request; then claimed as a right; until by degrees the greater part of the episcopal collations were forestalled, and the Bishops were robbed of their patronage, as princes of their right of investiture. In the thirteenth century, Gregory the Ninth commanded the Archbishop of Canterbury, and the Bishops of Lincoln and Sarum, to provide three hundred Roman ecclesiastics with the first benefices which should fall vacant.* In the reign of Edward the Third, on an inquisition taken in respect to dispensations, it was found that some clerks held twenty benefices, and that many incumbents were foreigners. "Bishops and parish priests were made, who understood not the language of their auditors, and which they were very unapt to learn, being so different from their own; many Italians, for instance, being beneficed in England. At length the evil grew so notorious, that the Pope was obliged to take notice of it, and to forbid any one to possess a benefice and especially a parish priest,

* M. Paris in ann. 1240.

who understood not the language of the country : but then reserving to themselves that invaluable power of dispensation, their prohibitions had no other effect, than instead of curing these disorders, to raise the prices of committing them, to the manifest profit of the Court of Rome, which was always ready to grant expectatives or reversions to foreigners and strangers, and after that a brief of dispensation.”* Seventy thousand marks, which exceeded the royal revenue by two thirds, were spent on Italian holders of English benefices, in the time of Bishop Gross-teste. These encroachments, which prevailed more, perhaps, in England than in any other country in communion with Rome, were met with continual resistance. By the statute of provisors passed 25 Ed. the Third, it was enacted, “in case the Pope collated to any archbishopric, bishopric, dignity, or any other benefice in disturbance of free elections, collations, or presentations, the collation to such dignity or benefices was to escheat to the crown, and the king and his heirs were to dispose of such preferments for one turn. And if any person should procure reservations and provisions from the Pope in disturbance of free elections, or of the presentees of the king, or other patrons, that then the said provisors, their procurators and notaries, shall be attached by their body, and brought in to answer. And in case they were convicted, they were to abide in prison till they had made

* F. Paul on benefic. matt. p. 121.

fine and ransom to the king at his will.”* The same act affirms that the election of Bishops belonged originally to the Crown. The same assertion is made in the statute of Carlisle, 35 Ed. I. which declares that “the King is the founder of all bishoprics, and ought to have the custody of them in the vacancies, and the right of patronage to present to them.” Language more earnest and uncompromising could hardly have been employed, than that which Edward the Third addressed to the Pope, “We being sensible of the hard usage put upon the English Church, and the damage we sustain in our Royal authority, can no longer be silent and acquiesce, but think it our duty to address your Holiness for a better regulation of these matters ; your Holiness, I say, who may please to consider you are St. Peter’s successor, who had his commission from our Saviour, not so much to shear the sheep as to feed them, who was commanded to strengthen his brethren, not to sink and depress them. We desire your Holiness would give a fair consideration to the premises, and remember that people are best governed by their own countrymen ; and that magistrates should be chosen out of a society they belong to.” And again, “which preferments used formerly to be disposed of by our predecessors upon a vacancy ; but afterwards, at the instance and request of the apostolic see, they granted the chapters, and convents of cathedrals, and abbeys the liberty of choosing their

* Collier, i. p. 554.

respective governors under certain limitations and conditions, which grant was likewise confirmed by the Popes themselves. But now, by the provisions and reservations of the apostolic see, these grants and confirmations are perfectly defeated and set aside; the chapters thrown out of the freedom of their elections, and the conditions upon which the charters were granted, broken, in which case, the grant becomes void, and our prerogative returns upon the Church in its former extent and latitude.”* The act of provisors having been evaded in various ways, further enactments were made, especially in the sixteenth year of Richard the Second, when the law was passed of which Sir E. Coke says, that it is far more stringent and comprehensive than that of Ed. the Third. The statute of provisors was confirmed in the reign of Henry the Fourth, and again in the time of his successor. That these were real, and availing restraints upon the usurpations of the Roman see, is evident by the terms in which they are spoken of by the Pope. Martin the Fifth in a letter to the Archbishop of Canterbury, thus expresses himself, “*Perlege illud statutum regium, si tamen statutum, si tamen regium dici fas est. Nam quomodo statutum, quod statuta Dei et ecclesiæ destruit? Quomodo regium, quod instituta peremit? contra illud quod scriptum est, honor regis judicium diligit. Et judica, venerabilis frater, et Christiane episcopo, ac Catholice*

* Collier, i. p. 547.

præsul, si justum, si æquum, si a populo Christiano servandum est. Imprimis per illud execrabile statutum ita rex Angliæ de ecclesiâ cum provisionibus, et administrationibus disponit, quasi Vicarium suum Christus eum instituisset.”* To the parliament also he writes, “ Multis nunciis ac frequentibus exhortationibus, pro debito pastoralis officii, vos ac regnum vestrum hactenus admonuimus, ut pro salute animarum vestrarum, et ipsius regni honore quoddam detestabile statutum contra Divinum et humanum jus editum quod sine interitu salutis æternæ nullatenus servari potest, aboleretur.”† As early as 1253 the Bishop of Lincoln refused to bestow a benefice on a foreigner. In the same way Martin the Fifth was defeated in his purpose of translating a Bishop of Lincoln to York. So again in the reign of Henry the Sixth, Archbishop Chicheley refused to consecrate as Bishop of Ely, one whom Pope Eugenius had appointed.‡ Nothing can be more clear than that the statute of Henry the Eighth, which vindicated the rights of the Crown, and at the same time those of all patrons, did but maintain what was for ages the law of the land, however it had been insufficiently enforced, and however frequently defeated.

* Burnet, i. Records, p. 96.

† Ibid. p. 99.

‡ The opposition which the Pope had to encounter was not confined to England. Matthew Paris writes, “ Eodem tempore cum vellet Dominus Papa quibusdam Præbendis Lugdunensis Ecclesiæ vacantibus quosdam aliegenas consanguineos vel affines suos, in-

SECTION 19.

THE 25 Hen. VIII. c. 21, is entitled "*The act concerning Peter-pence and Dispensations.*" The preamble sufficiently describes the amount of the grievance which it was intended to redress. "*That where your subjects of this your realm, and of other countries and dominions, being under your obeisance, by many years past have been, and yet be greatly decayed and impoverished, by such intolerable exactions of great sums of money as have been claimed and taken, and yet continually be claimed to be taken out of this your realm, and other your said countries and dominions, by the Bishop of Rome, called the Pope, and the see of Rome, as well in pensions, censes, Peter-pence, procurations, fruits, suits for provisions, and expeditions of bulls for archbishoprics and bishoprics, and for delegacies, and rescripts in causes of contentions and appeals, jurisdictions legantine, and also for dispensations, licences, faculties, grants, relaxations, writs called perinde valere, rehabilitations, abolitions, and other infinite sorts of bulls, breeves, and instruments of sundry natures, names, and kinds, in great numbers heretofore practised and obtained otherwise*

consulto capitulo intrudere restiterunt ei in facie Canonici Lugdunenses, comminantes, et cum juramento obtestantes, quod si tales apud Lugdunum apparerent, non possit eos, vel Archiepiscopus vel Canonici, protegere quia in Rhodanum mergerentur." *In ann.* 1245.

than by the laws, laudable uses, and customs of this realm should be permitted, the specialities whereof have been over long, large in number, and tedious here particularly to be inserted." It contains also in noble language the assertion of freedom from all foreign jurisdiction, "*for where this your Grace's realm recognising no superior under God, but only your Grace, hath been and is free from subjection to any man's laws, but only to such as have been devised, made and obtained within this realm, for the wealth of the same, or to such other as by sufferance of your Grace and your progenitors, the people of this your realm have taken at their free liberty, by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of laws of any foreign prince, potentate, or prelate, but as to the customed and ancient laws of this realm, originally established as laws of the same, by the said sufferance, consents and custom, and none otherwise.*"* The statute, which runs to great length, enacts that the burdensome exactions should be abolished. The 19th section provides, "*That this act nor any thing or things herein contained, shall be hereafter interpreted or expounded, that your Grace, your nobles and subjects intend by the same to decline or vary from the congregation of Christ's Church in any things concerning the very articles of the Catholic*

* Stat. at large, iv. pp. 291, 292.

*faith of Christendom, or in any other things declared by Holy Scripture and the word of God necessary for your and their salvations.”**

Avarice was the sin for which during many ages the See of Rome was conspicuous. From the period at which its influence grew strong in the English Church, revenue was the object stedfastly pursued, sometimes by claims boldly advanced, if the circumstances of the time permitted, or else by a thousand fraudulent pretences which furnished jests for the scoffer, and brought religion itself into contempt. It was a long series of extortions seldom relieved by any nobleness of purpose. It was a traffic in money, rather than a ministry for men's souls; what professed to be questions of faith or discipline, when they were closely examined, turned out to be nothing more than questions of finance. “*Tunc sedes clementissima, quæ nulli deesse consuevit dummodo albi aliquid vel rubri intercedat, præscriptos pontifices et abbates ad pristinas dignitates miserecorditer revocavit.*”† And again in the words of the same writer, “*Væ Angliæ, quæ quondam princeps provinciarum, domina gentium, speculum ecclesiæ, religionis exemplum, nunc facta est sub tributo. Conculcaverunt eam ignobiles, et facta est in prædam degeneribus.*”‡ Besides the payments which were exacted from the clergy, and the tax called Peter-pence laid on all householders,

* Stat. at Large, p. 301.

† Matt. Paris, quoted by Bramhall, i. p. 181.

‡ In annum 1237.

whose goods reached a certain value ; a great revenue was produced by indulgences, which were purchased at a fixed price. Penances enjoined by the canon law, *pro salute animæ*, were commuted for money : dispensations were granted on the same terms for non-residence among the clergy, and marriage within the prohibited degrees among the laity. A pretence for extortion was never wanting ; whether it were a crusade, or a quarrel with the Emperor. “ The Dominicans and Franciscans,” says Collier, “ had an authority from the court of Rome to receive people into the Crusade, and to discharge them from their vow, in case they repented and were willing to fine.”* Early in the thirteenth century, it was found, on writs of enquiry, that the revenue of the Roman Court exceeded the King’s. The vast amount raised by these discreditable means was expended on wars, and the expenses of a court, on stately buildings, and works of art, on personal luxury, and the enrichment often of those whose very existence was an unspeakable scandal to the church.

When the seat of the Popedom was removed to Avignon, and when there was a schism in the Papacy, many of the ordinary sources of revenue were cut off, and all available means of recruiting the Papal treasury were employed ; simony became more open and shameless, and all preferments were set to sale, “ *Longâ itaque pontificum Romanorum apud*

* Coll. i. 436.

Avenionem commoratione factum est, ut exarescentibus pontificii in Italiâ patrimonii redditibus, non posset Romana Curia sustentari, nisi reservandis sibi prælaturis majoribus, aliisque opimioribus beneficiis.”*

When the statute of Henry the Eighth speaks of “ravine and spoil,” it was no new accusation which was implied. The people never submitted willingly to the Pope’s exactions. Nothing could present less appearance of free contribution to a government which had claims upon their respect. Sometimes the clergy refused to collect Peter pence; † sometimes the Pope’s agent was dismissed without being permitted to make his levies, as in 1245; sometimes Parliament refused consent to the usual levies, as in 1307. At one period the goods of the Roman clergy were plundered, and their houses burnt, in many parts of England, and there were so many, and such powerful persons implicated in the combination, that no prosecution followed.”‡ In the middle of the thirteenth century, the English agent at the Council of Lyons, complained of the extortions of the Roman Court, as having become intolerable, and denounced them before the Pope in unmeasured terms. In the following year letters were addressed to the Pope by the Bishops, in which they represented that the people were brought to the verge of insurrection, and that all church property was in danger of confiscation.

* Thomass. p. ii. l. ii. c. 35, p. 288.

† Hody, part iii. p. 84.

‡ Collier, i. 434.

The barons wrote at the same time still more boldly, "that unless their grievances were redressed, they should be forced to undertake the matter themselves, and interpose for the common liberty: that hitherto, out of regard to the Apostolic See, they had forborne the use of such an expedient: but now, they should suffer the church and kingdom to be harassed no longer: and therefore, unless his holiness put a check to these disorders, he might be assured that the interests of the Court of Rome would be so far embarrassed in England, that it would be a very difficult matter to restore it to its former condition."* A century later, we find the Archbishop incurring the anger of the Pope for having said, that "all his zeal against the statute of præmunire was only that he might raise much money out of England." It is needless to add more in justification of the statute which abolished these fraudulent and burdensome exactions.

The 26 Hen. VIII. c. 1, is entitled "*The King's grace to be authorized supreme head.*" The preamble writes that "*albeit the King's majesty justly and rightfully is and ought to be the supreme head of the Church of England, and so is recognized by the clergy of this realm in their convocations, yet nevertheless for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this realm of England, and to repress and extirp all*

* Collier, i. 454.

*errors, heresies, and other enormities and abuses heretofore used in the same : be it enacted by authority of this present parliament, that the King our Sovereign Lord, his heirs and successors, Kings of this realm, shall be taken accepted and reputed the only Supreme Head in earth of the Church of England, called Anglicana Ecclesia,” and it is enacted that the King, “ his heirs and successors, Kings of this realm, shall have full power and authority from time to time to visit, repress, redress, reform, order, correct, restrain, and amend all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which by any manner, spiritual authority, or jurisdiction, ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained or amended, most to the pleasure of Almighty God, the increase of virtue, in Christ’s religion, and for the conservation of the peace, unity and tranquillity of this realm ; any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things, to the contrary hereof notwithstanding.” **

The title of “supreme head” was not given to the king hastily, or without qualification. Collier relates the circumstances under which it was bestowed, “The new acknowledgment was first proposed in this form, *Ecclesiæ et cleri Anglicani cujus protector et supremum caput is solus est, id est, the King is sole protector and supreme head of the Church and clergy of*

* Stat. at Large, iv. 313.

England. But this would not pass ; the reason assigned for their refusal was, the article being couched in such general terms, they were afraid it might be misunderstood in future ages ; and interpreted to an ungodly sense. After three days the King finding them constant to their resolve, relaxed a little, and stooped to something of a mitigation : he was prevailed with that the addition “after God” should follow the words “head of the Church,” &c. but neither did the qualification satisfy the clergy who chose rather to run the utmost hazards than comply. This fortitude proved very serviceable ; for soon after the Archbishop brought in a more inoffensive form, letting them know, the King was willing to accept the acknowledgment with the limitation of “*Quantum per legem Christi licet, supremum caput,*” &c. and with this proviso, the Supremacy was passed, though not without something of a struggle.* It has been said that the qualifying clause was finally omitted, which is certainly incorrect, for the King himself, in the letter which he wrote to the Bishop of Durham, for the removal of his scruples, says expressly, “to avoid calumny there is added a restriction of *quantum per Christi legem licet*, that is as far as is consistent with the gospel dispensation.” The title was exchanged in the reign of Elizabeth, for that of “*Supreme Governor,*” though it is not very easy to understand the scruple, which induced the Queen to

* Collier, ii. 62.

desire the alteration. "To be head of the English church," says Bramhall, "is neither more nor less than our laws and histories, ancient and modern, do everywhere ascribe to our English kings; to be governors of Christians, to be the advocates of the Church, to be patrons and advowees paramount of all churches; to be Defenders of the Faith, there professed; and, to use the words of the Convocation itself, *Ecclesiæ Anglicanæ protectores singulares, unicos et supremos dominos.*"* It is hardly more than what Cardinal Pole allows, "*hoc munus imperatoribus Christi fidem professis Deus Ipse Pater assignavit, ut Christi Filii Dei, vicarias partes gerant.*"† It was not however, a mere title which was in question, but the allowance of a most substantial power. The right of visitation and correction, the restraint of heresies and offences, the exercise of authority and jurisdiction in spiritual things belonged always *de jure* to the crown. These prerogatives were possessed by all Christian sovereigns without question or complaint, until they were alienated by the fraud of the Roman See. The statute does not profess to be operative, but declaratory. It does not give the sovereign any new rights, but it corroborates and confirms those which he is acknowledged to possess. The Supremacy which is here in question was confessed to belong to the Crown by those who were the clergy and bishops of the Anglo-Roman Church.

* Works, ii. 409.

† Quoted by Abp. Bramhall.

It was defended by Gardiner in his book, by Stokesly and Tonsal in their letters to Reginald Pole, and by Bonner, so strenuously, when he was the King's ambassador at Rome, as to excite the indignation of the Cardinals. *Supremus dominus noster*, was the title given to the King's ancestors, and the whole of English history is full of instances, in which, notwithstanding a powerful rivalry, they claimed the right and performed the acts which this name implies. When they summoned Convocations, or appointed to bishoprics, or granted exemption from ordinary jurisdiction, or decided controversies within the Church, they asserted their headship in a way which furnished ample precedent. But indeed the act was not only defensible, but in the highest degree necessary. If the supreme authority had not been restored and secured to the Crown, the statutes which were now framed, in spite of their stringency, would have been defeated, as many had been before. Could any legislation be more express than that of Edward the Third, or any government more vigorous? Yet an Archbishop ventured to use to him the arrogant words which are recorded of Stratford, "*Duo sunt, quibus principaliter regitur mundus, sacra pontificalis auctoritas, et regalis ordinata potestas; in quibus est pondus tanto gravius et sublimius sacerdotum, quanto et de regibus illi in divino reddituri sunt examine rationem; et ideo scire debet regia celsitudo ex illorum dependere iudicio, non illos ad vestram dirigi posse volunta-*

tem.”* And there is proof enough that abuses and encroachments were not removed even during the fifty years of Edward’s powerful administration ; and after his death they were revived in greater force than ever. Laws might have still remained on the statute-book, and have fallen quietly into disuse. It was only by the plain assertion of a countervailing authority that the remedy was to be provided ; and if it had been made some centuries earlier it would have spared scandal to religion, and much contention to the realm. The wise statesmen of the age saw clearly that the alternative lay between the Supremacy of the Pope and that of the King. Having ventured to examine the title of the former, and having discovered how little foundation it possessed, they were ready to restore what had been abstracted from the prescriptive and legitimate authority of the Crown. All previous statutes which either redressed injuries committed by Rome, or vindicated the rights of the English Sovereign, were preparations for the present, which does but express in the aggregate the claims which are asserted throughout the others in detail.

The 26th Henry VIII., c. 3, is called, “ *The bill for the first fruits, with the yearly pensions to the King.*” It recites that “ *It is, and of very duty ought to be the natural inclination of all good people, like*

* Letter to Ed. III., Wilkins, con. ii. 663.

most faithful, loving, and obedient subjects, sincerely and willingly to desire to provide, not only for the public weal of their native country, but also for the supportation, maintenance, and defence of the royal estate of their most dread, benign, and gracious sovereign Lord, &c.*” It enacts that the first fruits and profits for one year of every spiritual benefice shall be paid to the King. Whether this grant, and that of tenths, which was made for the same object, is to be condemned, or defended, will depend on the amount which could equitably be claimed from the clergy towards supporting the dignity of the crown. Ever since the close of the thirteenth century, ecclesiastical property had been subjected not only to regular taxation but to occasional and extraordinary demands. The ground of previous exemption was long since abandoned, and if the impost ordained by the present statute is to be condemned, it must be in respect of the amount claimed rather than the principle of the claim, which had been previously admitted. We may observe that some mitigation of the demand was provided by a subsequent act, 27th Henry VIII., c. 8. The title of the Pope to receive this tax was the worst that could be advanced ; while that of the King was justifiable by the expenses of government, in the benefits of which all his subjects had a share. The payment was fixed for the future, and could not be increased to its former exorbitant

* Stat. at Large, iv. 313.

amount; nor could it be turned any longer to corrupt and simoniacal purposes. It is, however, the less needful to examine the subject at any length, because the income of first fruits and tenths has since the 2d and 3d Anne, c. 11, been paid into the hands of trustees for the augmentation of small benefices.

The 28 Hen. VIII. c. 10, is as follows, "*If any person shall extol the authority of the Bishop of Rome, he shall incur the penalty of præmunire provided anno 16 Ric. II. c. 5. Every ecclesiastical and lay officer shall be sworn to renounce the said Bishop and his authority, and to resist it to his power, and to repute any oath taken in maintenance of the said Bishop or his authority, to be void; and the refusing of the said oath, being tendered, shall be adjudged high treason.*"* The statute of præmunire was framed in the sixteenth year of Richard the Second. It was preceded by other statutes in the same reign, of similar intent, (3 Ric. II. c. 3; 7 Ric. II. c. 12; 12 Ric. II. c. 15), and the offence which it describes is that of introducing a foreign power into England, by paying to the Pope the obedience which is due to the Crown. In the writs for executing these statutes, the words præmunire (or præmoneri) facias, being used to command a citation of the party, have given name not only to the writ, but also to the offence to which it refers. The act, which especially bears this name, forbids the holding of

* Stat. at Large, iv. 413.

preferment by aliens, and puts out of the king's protection all persons who accept preferment from a foreign patron, and it enacts that "whosoever procures, at Rome, or elsewhere, any translations, processes, excommunications, bulls, instruments, or other things which touch the king, against him, his crown and realm, and all persons avoiding and assisting them shall be put out of the king's protection." The independence of the kingdom had been previously asserted, as well by numerous acts of parliament, as by a remarkable letter of remonstrance addressed by the barons to Boniface the Eighth, in 1301, on occasion of his command laid upon the King to desist from his attempt on Scotland. The following is part of their protest. "Having thoroughly weighed the purport, and contents of your Holiness's letter, we came to this unanimous resolution, which by God's assistance we intend never to depart from. That our sovereign lord the King is by no means obliged to own the jurisdiction of your court, or submit to your Holiness's sentence, with respect to his sovereignty over the kingdom of Scotland, or indeed in any other temporal matter whatsoever: neither is he to suffer his rights abovementioned to be called in question: neither is your Holiness to expect any embassy from the King upon this subject, in regard any of these applications would tend to the manifest disherison of the royal dignity and crown of England, be plainly subversive of the government, of the liberties, customs and ancient laws of the country: for the maintenance

of which we are all bound by oath ; and by the grace of God are resolved to defend them, to the utmost of our power.”* The authority of the Roman see had however been in continual exercise over the clergy, and the complaint of Henry the Eighth was not without reason ; “ The King sent for the speaker of the House of Commons, and told him, that he found upon enquiry, that all the prelates, whom he had looked upon as wholly his subjects were but half subjects ; for at their consecration they swore an oath quite contrary to the oath they swore to the crown ; so that it seemed they were the Pope’s subjects rather than his. Which he referred to their care, that such order might be taken in it, that the King might not be deluded.”† The oath in question, which was to be taken by bishops and abbots, contains the following among other engagements, “ The papacy of Rome, the rules of the holy fathers, and the regality of St. Peter, I shall help and maintain, and defend against all men. The legate of the see Apostolic going and coming I shall honourably entertain. The rights, honours, privileges, authorities of the Church of Rome, and of the Pope and his successors, I shall cause to be conserved, defended, augmented, and promoted. I shall not be in council, treaty, or any act in the which anything shall be imagined against him, or the Church of Rome, their rights, seats, honours, or powers : and if I know any

* Collier, i. 496.

† Burnet i. 123.

such to be moved or compassed, I shall resist it to my power, and as soon as I can I shall advertise him, or such as may give him knowledge.”* Whether persons who were bound by such a promise to a foreign potentate, could render due allegiance to their own sovereign, might well be questioned. From the eighth century the Popes had weakened the authority of Metropolitans, by compelling them to receive the pallium from Rome, and to promise obedience to that see. By a constitution of Alexander the Second, suggested by Hildebrand, no bishop was allowed to enjoy his promotion, till he had received papal confirmation, and Gregory the Seventh himself compelled Metropolitans to attend in person. In the year 960, an Archbishop died on the Alps, through cold, while making this compulsory journey. Less than the renunciation provided by statute would have been inadequate, and when we remember how grievously the Church and realm had suffered by the long oppression of a foreign power, we shall be slow to pronounce the terms too stringent.

SECTION 20.

THE 28 Hen. VIII. c. 16, is called, “*A provision for dispensations and licences heretofore obtained from the see of Rome.*” The preamble states the abuse

* Burnet, i. 123.

which it was intended to correct, “ *Where the Bishop of Rome and his predecessors, of his and their covetous and ambitious minds, to the intent to advance and enrich themselves and the see of Rome, to the great impoverishing of this realm of England, and other the King’s dominions, contrary to God’s laws, the laws and statutes of this realm, and in derogation of the imperial Crown of this said realm, have heretofore wrongfully pretended, extorted, used and exercised, within the same, divers and many usurped powers, jurisdictions and authorities, during and by the which time the said Bishop and his predecessors arrogantly and unjustly have taken upon them, for great sums of money, and other profits to them given, to grant unto the King’s subjects and other inhabitants within this realm, and other the King’s dominions, many, divers, and sundry authorities, immunities, faculties, privileges, licences, indulgences,*” &c.* It enacts that bulls, faculties, dispensations, &c. previously obtained shall be null, and that in future none shall be admitted. The Pope’s usurpations of authority were chiefly in extraordinary jurisdiction, and of these the use of dispensations had, perhaps, produced as much mischief as any. The dispensing power followed the claim of legislation. In the words of Grotius, “ *Dispensare, hoc est, leges solvere, is solus potest, qui ferendæ abrogandæque legis potestatem habet.*” But from an early time it was received with opposi-

* Stat. at Large, iv. 443.

tion. Bishop Stillingfleet writes, "We find that in St. Bernard's time, the Pope did take upon him to dispense too far, to his great dissatisfaction, for by his dispensing power, he saith, he overthrew the order of the Church; "murmur loquor," saith he, "et querimoniam ecclesiarum." The Pope dispensed with the ecclesiastical laws in exemptions of Abbots and others from that subordination they stood in to their proper superiors: he saith, he could not see how this dispensing power could be justified: you do indeed show a plenitude of power, but it may be not of justice; you show what you can do, but it is a question whether you ought or not: and you ought to consider, first, whether it be lawful; then whether it be decent; and lastly, whether it be expedient. At last he allows a dispensing power in two cases, urgent necessity, and common good; otherwise he saith, it is not *fidelis dispensatio*, sed *crudelis dissipatio*, an overthrow of all order and government. In one of his epistles he speaks sharply against getting a dispensation to do that which it was not lawful to do without one: and he thinks he hath disproved it by invincible reason, for a licence from the Pope can never make that lawful, which without it were unlawful."* Some centuries later the abuse stood foremost in the *centum gravamina*, which expressed the complaints of the German people. In England dispensations were resisted from an early period. When

* *Eccles. Cases*, ii. 141.

Boniface the Eighth exempted the University of Oxford from the visitation of the Archbishop, to whom it belonged by law, the bull was decreed in Parliament to be void, because it had been obtained “in prejudicium Regis coronæ, et legum et consuetudinum regni enervationem.” By the statute 2 Hen. IV. c. 3, all persons who accept any provision from the Pope, to be exempt from canonical obedience to their proper ordinary, are subjected to the penalty of præmunire. To use the words of Blackstone, “this is the last of the ancient statutes touching this offence. The usurped civil power of the Bishop of Rome, being pretty well broken down by these statutes, as his usurped religious powers were in about a century afterwards.”* By the present act, the privileges of the exempt abbeys were taken away; and many abuses, which had grown strong under licenses from Rome, were finally removed. There was a provision that such “bulls, faculties and breeves,” as should receive allowance under the great seal, might be renewed by the Archbishop of Canterbury.

SECTION 21.

THE 31 Hen. VIII. c. 13, is “*An Act for the dissolution of Monasteries and Abbeys.*” It recites, in terms singularly untrue, the way in which Abbots

* Vol. iv. p. 112.

and others had resigned their property, and it enacts that the religious houses, with their possessions, should be given to the King, and by a previous act (27 Hen. VIII. c. 28) all lesser monasteries had been conveyed in the same manner. Independently of the hardship of the confiscations, it cannot be denied that the provisions of the act were carried out with great violence and profaneness, with much injustice and cruelty. Many poor helpless people were cast upon a world which they were utterly unfit to encounter; many churches were destroyed, and many parts of the country deprived of the means of cultivating the land, or relieving the necessitous. On the other hand, it is to be remembered that these great foundations had grown rich by unlawful means, and in spite of the very principles on which they were established: nor can we with any reason doubt that, in many instances, they had become very corrupt in morals. Whoever represents them as mere retreats of learning, piety and beneficence, must either be miserably ignorant of the testimony afforded by the records of the age, or very undaunted in his resolution of making out a case. If we are bound to receive the favourable report presented, in some instances, by the commissioners themselves, we cannot fairly reject the condemnation of others which comes on the same authority, confirmed as it is by the confessions of the accused. How far the conventual bodies were in the condition which their adversaries represented, cannot now be fully ascertained. The evidence is very

conflicting, and after three centuries the controversy is unsettled. The monasteries and other religious houses were viewed with great jealousy as the strong holds of those who were devoted to the interests of Rome. Efforts had been made for limiting their wealth, but without success, and it had grown to a very unreasonable amount ; nearly half the knights' fees in England had been transferred to ecclesiastical holders, and their moveable property had reached a proportionate extent. As early as the reign of Henry the Third, an attempt was made to restrain the alienation of lands to monastic bodies ; and in the 7 Ed. I. the statute "*de religiosis*" was passed. This is the mortmain act by which the alienation of lands or tenements to any corporation, whether ecclesiastical or secular, without license was forbidden. The loss of escheats, wardships, and other feudal profits, by vesting estates in hands, from which the customary benefits could not be claimed, was the ground on which the consent, both of the mesne lord and of the King was required. Such licenses had been held requisite sixty years before the Conquest.* The constitutions of Clarendon acknowledge the necessity, in respect of advowsons, which were greatly coveted by the Monks, and provided that "churches belonging to the fee of the King, should not be impropriated without his grant." The statute of Edward the First was intended to prevent the alienation of lands,

* Blackstone. ii. 270.

which had still increased. It restrained fraudulent conveyances in some measure, but its provisions were eluded with so much ingenuity, that farther enactments, especially in the reign of Richard the Second, were found needful. Blackstone gives an account of the various subtle evasions which were invented, and which, from time to time, made fresh securities necessary. Nothing indeed can be less creditable to the Church than the history of mortmain acts; and the confiscation of ecclesiastical property, on the suppression of monasteries, is to be ascribed in part, at least, to the frauds by which, in numberless instances, it was known to have been acquired. The jealousy of these religious corporations was not peculiar to England, or to the sixteenth century. As long before as the time of Edward the First, many privileges were taken from the greater monasteries, and in the reign of Henry the Fifth, alien priories were suppressed, and their lands given to the Crown. And all over Europe restraints have been imposed, by requiring special license for new monastic foundations, and for the alienation of lands to those which already exist.

SECTION 22.

THESE are the principal laws of Henry the Eighth, which touch religion. They put an end to the claims of the Roman see, its dispensing power, its paramount legislation, its imposition of taxes, its custom of receiv-

ing appeals, and all other interpositions in the government of the English Church. It was the final close of a long pending contention which can never be renewed. The genius of the age and the character of the people would make the attempt hopeless. A corrupt and oppressive system was destroyed in the sixteenth century ; its restoration in the present is impossible.

But it is not only in England that the supremacy of the Pope has been subjected to that of the Crown. The Gallican Church has long denied any temporal authority to the Bishop of Rome, and has imposed very strict limits on his spiritual jurisdiction. Much of the canon law it rejects ; in its articles of 1682 it upholds the Council of Constance ; it receives the *placitum regium* as the necessary preliminary to the publication of all rescripts from the See of Rome ; and when we consider that this is nothing less than to restrain the intercourse of a spiritual sovereign, with those whom he claims for his subjects, we shall see how much it includes. The state has held its superiority, whether we speak of French parliaments overruling the jurisdiction of Bishops, as in the case of the Jansenists, or of the interference of the Sovereign, as when Louis the Fourteenth confirmed the decrees of a most important synod. In Tuscany, in Naples, in Parma, as well as in Austria, the power of Rome is subjected to very great restriction, imposed at the will of the State, without remonstrance or protest from the Church. In Sicily the king's tribunal ex-

ercises direct ecclesiastical jurisdiction. In the days of Charles the Fifth, the German nation acknowledged the Supremacy of the Crown in ecclesiastical matters, by their submission to the Interim, which rules questions of a purely religious kind. And it must ever be the same. In the nature of things, and in the constitution of society, the national Church every where has but the alternative, between the supreme dominion of the civil governor, and the headship of an alien power. “*Ecclesia est in republicâ, non respublica in ecclesiâ.*”

There cannot be two independent sovereignties in the same nation. The jurisdiction of the one would impinge on that of the other ; they touch at a thousand points, and in ways innumerable. As long as the question of superiority is unsettled, conflict from time to time is inevitable, and this is indeed the key to much of the contention by which society was so long disturbed. It was the contest for pre-eminence between rival jurisdictions, which could not now occur. We may illustrate the nature of the change which has taken place, by selecting an instance. In the reign of Henry the Third, a Council was held at Oxford,* at the close of which the Bishops, and others, intreated the Legate, who had presided, to use his influence for procuring the alteration of certain things, by which, they alleged that the liberties of the Church were invaded. They es-

* Spelman, ii. 137.

pecially desired that lay judges might not have the power of determining whether a cause should be heard in a spiritual, or a secular court, and also that Bishops should not be compelled to render account before the King's justices, why they refused to confirm the election of an abbot, or to admit a clerk to a benefice. The result of the petition, we do not know; it probably produced no effect, for the subject in question continued to be vehemently debated. At present no difficulty could arise in the cases suggested, for a writ of prohibition would issue, and quietly determine to which jurisdiction a particular cause belonged; and if a clerk were to complain that institution was unjustly refused, an action of Quare impedit would bring the question to an issue, in a manner which could not be reasonably impeached. It is true that the decision would imply the superior, and corrective jurisdiction of the secular court, acting under the Queen's commission; and we ought not to complain, since we do not want to renew the struggle of the thirteenth century. The Church could not adopt any line of policy more fatal than that which would again array laymen and ecclesiastics against each other, as if they were opposed in interest, instead of being alike members of the body which has Christ for its Head, and equally bound to promote the extension of His kingdom. The blessings of religion, by which men's souls are profited, in whatever degree they were enjoyed, during the period of the long conflict between Church

and State, came by God's providence, not in consequence, but in spite of, the struggles for pre-eminence. The dominancy of the Church in civil affairs has never produced any benefit, but in proportion as it has gone beyond its proper jurisdiction, it has done injury to its best and highest functions : and in the nature of the case, transgressions of the proper limit would be of frequent occurrence, unless there were some controlling power external to itself. Since the Reformation, the period in which ecclesiastical influence has been most prevailing, not only in its appointed sphere, but also far beyond, is that which extends from the accession of Laud to the See of London, until the opening of the Long Parliament. It is an interval to which we can trace but few spiritual advantages. The High Commission Court, established by virtue of the statute 1 Eliz. c. 1, had strained its powers to the visitation of offences not of spiritual cognizance, and punished them with unjustifiable severity. It had become virtually free of secular control, and went on unchecked for years, accumulating against itself enmity not unmerited, and which wrought great and permanent injury to religion. The contest which might have been nominally for independence, but was really for supreme authority, is now finally closed. We have no reason to complain, for the Supremacy of the Crown, defined and established by a series of statutes, is but the permanent revival of that authority, in which, as we have seen, the Church acquiesced in the first days of the

Christian empire, and for ages afterwards, in France and Germany, as well as in England, in Anglo-Saxon as well as in Norman times, until it was interrupted by the counteracting power, which grew up in a semi-barbarous age, and by the help of such fraudulent documents, as were never before admitted for evidence on so great a question.

SECTION 23.

THE changes which have taken place since the Reformation, have been urged as reasons why the Church cannot now acquiesce, as willingly as it once did, in the control of the civil power. Among them, the chief is the alteration in the constitution itself, by which gradually there has been a greater infusion of popular influence. It began in the latter days of Elizabeth; it was repressed in the reign of James the First, only to go forward with greater force in that of his son. There has been an undeniable increase of power in the parliament, up to the present time, and it is partly composed of those who are not within the communion of the Church. Too much stress has perhaps been laid upon the importance of the change, as it affects ecclesiastical interests. The Roman Emperors represented in their own persons, the whole legislative and executive powers, but there was no security in depending on the individual character of the Sovereign. The acts of Constantius, or

Julian were as injurious as those of Constantine and Theodosius were beneficial. But the chief authority is now centered in the house of Commons. The executive is in the hands of ministers, whose appointment is really determined by the voice of the majority represented in Parliament. The Crown is the fountain of jurisdiction; and when we speak of its Supremacy in ecclesiastical matters it is a compendious way of describing the overruling power of the State, whether exercised directly by the Sovereign, as in a great measure it once was among ourselves, or, as at present, by constitutional advisers. It is no new thing for parliament to interfere in ecclesiastical causes; Stillingfleet has cited some instances,* and he might have added many more. But it is alleged that the power of legislation, which was formerly confined to those who were nominally at least members of the church, and so to be presumed friendly to its interests, has now been transferred to a House of Commons elected under conditions, which take away any reasonable expectation of favour. When the disadvantage of the change has been admitted, we must not forget that the majority in Parliament represents the prevailing mind of the nation, and that is greatly on the side of the Church. Its establishment is a separate consideration from that of its origin and character; the former must depend on the will of the nation, the latter is independent of all temporal powers, and

* Eccles. Cases, ii. 117.

would be in no way impugned if every possession, and privilege were taken away. It contains a heavenly and indestructible element, which has nothing to do with human policy, but is bound up with the securities of a divine promise. It has also a national form, the maintenance of which is a witness that it embodies, for the most part, the faith of the people. As long as the Church remains in undisturbed possession of its endowments there is a standing proof that the Supreme civil power, whose voice is that of the people or the larger portion of them, is not unfriendly. If it were really hostile, as some have alleged too hastily, there is no apparent reason why it should not proceed to far greater lengths of opposition. What is concluded in Parliament are the acts of churchmen. We ought not to believe, unless it were proved by unquestionable evidence, that they are guilty of ill will towards the spiritual community of which they form a part. If so melancholy a conclusion were established, the only availing remedy is in the hands of the Church itself. It must henceforth teach and guide its lay members so faithfully, and bind so closely to itself their hearts and consciences that they may represent its interests truly in their sphere, and support all its just spiritual claims. There is no other resource to be trusted.

CHAPTER II.

SECTION 1.

THE right of receiving appeals from the ecclesiastical court is the point at which the practical application of the Supremacy has at present excited attention. It was before hand probable that this would be the case. There are other powers in continual exercise and hardly less important, but this is the most critical as ruling authoritatively what is the doctrine of the Church. The very rarity of the instances in which its interposition is called for makes them the more impressive when they occur. A large question has been opened by the decision of a cause which came to trial by an unexpected combination of circumstances ; and now we have to consider, not the particular judgment delivered, but the commission and constitution of the court from which it issued. And indeed it is to be desired that we should put out of sight as far as possible the decision which has been pronounced, so as to form a just and unbiassed conclusion on the subject which it has brought into debate ; and this could hardly be expected if the strong excitement which the trial of the case has produced were suffered to mingle with the broader enquiry which is before us. Whether we are dissatisfied or content with the sentence itself we shall

be equally liable to form a limited and incorrect judgment if we suffer the influence of it either way to interfere. Differences of opinion which lead to the commencement of a suit, generally survive its conclusion. The jurisdiction of the court is a separate consideration ; and we ought to suspect ourselves of prejudice if we suffer our views of its origin and authority to be influenced by what it has pronounced in any particular instance.

The right of receiving appeals is of very great importance, as it brings to a point the rival claims of the ecclesiastical and civil powers. It was the critical question which brought to issue the authority of the Pope and the King on so many occasions before the Reformation. On the one side was the spiritual jurisdiction which claimed to draw to itself all ecclesiastical cases in the last resort ; on the other was the prerogative of the Prince giving their commission to the judges who pronounced a definitive sentence, and forbidding to carry the suit out of the kingdom. And if any cause had been moved step by step to the decision of a General Council, the struggle for preeminence would have been the same ; the choice would have lain between the summons of the Emperor and that of the Pope ; in other words, it would have been the question from whom this supreme court should derive its authority and jurisdiction.

When the usurpation of the Bishop of Rome was abolished in England, the power of finally ruling the decisions of all courts was declared to be in the Crown.

The power which was peremptorily denied to the Pope was assured once for all to the King. They who prepared the statute (25 Henry VIII. c. 19) saw plainly that there was no alternative, and therefore, as in section 3, they enacted that no appeals should be removed out of the kingdom ; so by section 4, they provided that “ for lack of justice at or in any of the courts of the Archbishops of this realm, or in any of the King’s dominions, it shall be lawful to the parties grieved to appeal to the King’s Majesty in the King’s Court of Chancery.”*

It is true that by a previous act (24 Henry VIII. c. 12, s. 9) in one particular class of cases, the final decision was left to a provincial council ; but the subsequent statute took away the exception, as it has been lately ruled ; and on grounds capable of the fullest justification, the final judgment of all causes was given to a court which derived its authority from the Crown. The supreme power in the state is bound to see that justice is administered in all causes and to all persons ; and this right, or to speak more accurately this duty, implies the hearing of appeals. If any class of subjects were excluded from this final supervision the persons whose interests they involve would be deprived of an advantage which all others enjoy, and would have just ground of complaint.

* Stat. at large, iv. 285.

SECTION 2.

AN appeal implies the rehearing of a cause. There is virtually an allegation that it has been wrongly decided in the lower court ; not merely that there has been an error in the form, but, in the words of the act, that there has been " lack of justice." It is not whether the bounds of jurisdiction have been transgressed, or any similar question, which is to be tried, but something more substantial, which cannot be determined without reopening the case. It must be heard over again, and argument must be produced, in order that the court may determine how far the judgment against the appellant is to be affirmed or reversed. In civil causes, whether they come by appeal from common law courts or courts of equity, the mere correction of an irregularity which may have occurred in the previous hearing is not all that is required, but the revision of the judgment after pleadings, which reach the whole case. And there is no sufficient reason why the court of appeal should have less power in spiritual cases. The limitation which would allow to it the " cognizance only of the form and procedure of ecclesiastical causes, and not the merits or internal state of the matter itself," cannot be maintained, because it would be a denial of justice in one class of cases which is allowed in all others. There is a process of appeal with which the French law is familiar called *appellatio tanquam ab abusu*, of which

Van Espen says, “ Instituantur appellationes ab abusu, cum adversus decreta conciliorum, receptas consuetudines, et jura regni aut jurisdictionem regiam, Judex Ecclesiasticus aliquid per abusum attentat; quod his verbis a Pragmaticis efferri solet; cum violentur Decreta, constitutiones regię, et Libertates Ecclesię Gallicanę.”* The origin and character of this process is described by De Marca at some length.† The learned Archbishop takes considerable pains to prove that it had no other operation than to keep ecclesiastical judges within their proper rules and limits; but whoever knows any thing of the way in which the Parliaments of France interposed in ecclesiastical matters will be slow to receive his account. His own words shew indeed sufficiently that the judges did not bind themselves very carefully by this restriction. “ Maxime cavere debent judices ne patrocinium ultra quàm par sit in detrimentum ecclesiasticę jurisdictionis proferant. Quod variè accidere potest, scilicet si non solùm se canonum exactores præstent, sed etiam executores; id est, si pronuntiantes de abusu admissio, eo gradu non hæreant, sed etiam de negotio ecclesiastico judicium ferant.”‡ And again, “ Enimvero quia contingere solet aliquando ut magistratus præter sententiam Regum ecclesiasticę jurisdictioni injuriam faciant,

* Jus. Eccles. Univ. p. iii. tit. x. c. 4, quoted by Mr. Gladstone.

† De Concord. lib. iv. c. 19, 20.

‡ c. xx. s. 2.

iisque se rebus immisceant, a quibus ex præscripto legum et canonum temperare debent, relictum est etiam Episcopis appellationis ab abusu remedium adversùs ipsa supremarum curiarum tribunalia, quæ sanctoris consistorii decretis rescinduntur.”* The limitation indeed could not be preserved, and ought not to have been, even if it had been possible, because it was a corrective and controlling power in the state, acting upon the spiritual courts, which was required. Whether the process be analogous in all respects to our own, we need not pause to enquire; it is at least certain that provision for an appeal from ecclesiastical sentences is not peculiar to ourselves.

SECTION 3.

THE duty of the judge in such cases is to decide according to the standards of doctrine and the canons of discipline. He has no power of limiting, or enlarging, or varying them in any way; his business, in the words of Lord Bacon, is, *jus dicere*, not, *jus dare*. The administrative function is very distinct from the legislative. The one belongs to a synod, the other to a judge. The Bishop in his consistory court, and the Metropolitan in his court of Arches, exercise the one, but have no power at all to interfere with the other. The difference is so obvious, as

* s. 5.

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hardly to have required notice, if so much had not been lately said about the extent to which the Church becomes committed by the decision pronounced on appeal in a spiritual cause. The learned persons themselves to whom the important office of pronouncing such judgments is committed, well know the extent of their power, and none could show more anxiety than themselves, to explain that the ruling questions of faith, or the pronouncing authoritatively on certain alleged statements that they are in themselves true or untrue, lies beyond their limit of jurisdiction. It is not the settlement of doctrine that they undertake, but the pronouncing whether opinions promulgated, are allowed or forbidden by the Church, to those who hold office in its communion. The sentence remains for a precedent, carrying so much weight as belongs to the circumstances under which it was pronounced. It is not perpetually binding, but only *pro hac vice*, and a future court might, if it saw fit, decide a future case in a different way. In the meanwhile we may form a free opinion on the accuracy of the decision, unless indeed modesty and self-diffidence restrain us; but we are not at liberty to call in question articles of faith as long as we remain within the communion of which they form the terms. The business of legislation is separate from that of judicature, and it will serve no good purpose to represent the former as included in the latter. The lines of distinction between the two have been drawn very plainly, and are very jealously maintained.

SECTION 4.

THE supreme power in the state is bound when called upon to apply correction to all administrations of justice. The subject may be spiritual, but it is also connected with considerations of disability or other penalties, the wrong application of which is to be prevented. The doctrine and discipline may be admitted to have the highest possible origin, and yet their connection with various social conditions brings them under judicial cognizance. The Church by its inherent authority over its members, for instance, pronounces spiritual censures, but since civil injury and loss may be alleged, the revision of the sentence falls properly under the chief authority in the state. The power of inflicting temporal penalties, directly or indirectly, is one which the Church does not possess *jure divino*; the Scriptures contain no trace of such a prerogative among its endowments. It is a power which comes from the State, and to examine the grounds for the allegation of injustice in any particular instance of its application, is no more than a duty.

Again, there are not only certain powers, the exercise of which is in this way both authorized and superintended, but there are also endowments the right distribution of which, is also to be guarded. They are guaranteed by the imperial authority, which has the responsibility of deciding whether they are

enjoyed by persons who are duly qualified ; this is ascertained ordinarily by the Bishops, and in extraordinary cases, by appeal to the supreme jurisdiction. Since the property is secured by the intervention of law, it is a necessary condition that the State should have the right of determining, in the last resort, whether it is held by persons who comply with the prescribed conditions, lest it should be found to maintain by its authority those who are in wrongful possession. In the case of a national Church, it is no more than equitable, that there should be a power of determining, in the highest court to which appeals are carried, whether the doctrine held in any particular instance, is such as it was intended to establish, or the contrary. In the former case the claimant would be wronged if he suffered a refusal ; and in the latter the Church would be injured if he were admitted. And this is the question which comes for decision, not frequently, but in some extreme instances, by those who are appointed to the final adjudication of all appeals. The intention is not to pronounce whether the doctrine is true or false, which belongs to another province, but to determine whether it is such as the Church and State by their joint action designed to sanction. The primary object is the settlement of a question of right, which has to be determined on these grounds ; the enquiry into doctrine is incidental, but it must be entertained because it is necessarily involved in the issue to be tried. When a clerk claims to be admitted to a preferment from which he alleges that he has been unjustly excluded

on account of the opinions which he has promulgated, the cause can only be determined by bringing his statements into comparison with the recognised standards of faith. Properly speaking, it is a case of discipline, and if the question were of deprivation on the ground of heterodox opinions, instead of refusal to present, this would be more apparent. The character of the case would be really the same, but presented in a different form.

This interposition on the part of the state is not restricted to the form of religion which is nationally established. By the mere possession of property of which the law is the guardian, the tenets of any religious teacher might be drawn into the like examination, for the purpose of determining whether they agree with the opinions for the maintenance of which the endowment was assigned by the donor. Religious bodies not resembling our own either in constitution or immunities, are subject to this cognizance, whenever a question of endowment is to be tried. They are at liberty to maintain what opinions they please, provided only that they do not impugn any principle held indispensable to the well-being of society, and the state will make no claim of interposing or judging ; but if a right of property or privilege is involved, the statement of doctrine necessarily enters into the pleadings. The parties to the suit consent to the interference, and by joining issue on the question concur to admit the jurisdiction. They could not obtain a decision on any other terms.

SECTION 5.

IN determining the source from which authority is properly derived for exercising appellate jurisdiction, great stress has been laid, and not without reason, on the examples which are furnished by the earliest ages after the establishment of Christianity. The question was one of those which were certain to be brought into debate, and the settlement was the more important, as furnishing precedents for the future. In the reign of Constantine, a case occurred which is every way notable. Cæcilian, Bishop of Carthage, was persecuted by the Donatists on the alleged ground, that his ordination was null, as having been performed by Bishops who had given up the sacred books during the persecution in the time of Diocletian. When he still retained his See, in spite of the condemnation pronounced by the Donatist Bishops, they appealed to Constantine who appointed a synod to be held at Rome for the trial of the case. Cæcilian was acquitted, and the Donatists again appealed, when the Emperor by his authority suspended the sentence, and convened a large Synod at Arles, where Cæcilian having been again acquitted, his opponents applied again to Constantine, who spoke in strong terms against this appeal, but ended by receiving it and finally deciding the question. The force of his words is altogether neutralized by the fact, which is beyond denial, that he did finally adjudicate “ Tandem im-

portunis Donatistarum clamoribus vexatus, de appellatione cognovit; sed, ut observavit Augustinus, eis ipse cessit ut de illa causa post Episcopos judicaret, à sanctis antistitibus postea veniam petiturus; dum tamen illi quod ulteriùs dicerent non haberent.”*

The case is the more striking on account both of the Emperor's personal unfitness and the very exalted view which he held of the authority of bishops. “Sacerdotum iudicium,” are his words, “ita debet haberi ac si Ipse Dominus residens iudicet.” Not less remarkable is the case of Athanasius, whose enemies the Arians Meletians and Eusebians brought many hard accusations against him in the Council of Tyre.† He was no doubt most unjustly treated, and all the resources which falsehood could supply were used to procure his condemnation. But the question does not regard the treatment which he received from the Council, but the course which he subsequently followed. There is no question that, with the other Bishops who shared his opinion, he applied to the Emperor, and that the appeal was heard. “We require,” they said, “that the cause may be reserved for the hearing of the most pious Emperor, before whom we shall be permitted to set forth the rights of the Church and our own. For we fully confide that his Piety will by no means condemn us, when he is acquainted with our reasons.”‡ In the next century

* De Marca, lib. 2. c. 7. l. 2.

† Leslie, case of the Regale, w. i. 699.

‡ Athan. Apol. 2.

Nestorius who had been condemned for heresy by Celestine in a Synod at Rome, and by Cyril in a Synod at Alexandria, persuaded Theodosius the younger to summon the Council of Ephesus, for the rehearing of his cause. In the mean time the sentence which had been pronounced against him, at Rome and Alexandria, was suspended by the authority of the Emperor who thus overruled two solemn decisions of the Church. Again, Eutyches having been condemned for heresy in the Synod of Constantinople, Theodosius interposed to prevent the execution of the sentence, and summoned the second Council of Ephesus, in which the proceedings were very irregular, and Eutyches was unjustly acquitted. This result also occurred through the intervention of the Emperor after the case had been decided by the judgment of a Council. The conclusion still farther proves the authority conceded to princes by the Church, for Leo and other bishops entreated Theodosius, though in vain, to annul the decision of the second Council of Ephesus. That which he refused was granted by Marcian; the original sentence against Eutyches was confirmed, and that which had been subsequently pronounced against his opponent was reversed by Imperial authority.* There can be no clearer instance of Jurisdiction in the supreme civil power than that which annuls the sentence in

* These important cases are fully stated by De Marca, lib. iv. c. 4.

an ecclesiastical cause pronounced by a Synod of Bishops. The later Greek Emperors went much farther than any of those precedents by claiming the right not only to appoint judges for the trial of bishops and clergy, but also to remove causes in which they were concerned, from the spiritual to the secular courts. This was clearly repugnant to the canons; but it was thought no invasion of ecclesiastical privilege that a civil judge should be appointed in the character of assessor in such cases.* There can be no doubt that appeals were received by the Emperors, and that the Church consented to the principle. Indeed we find that there was sometimes recourse to the secular tribunal, under circumstances in which we should not have expected it, as when the Christians applied to Aurelian for the removal of Paul of Samosata from the possession of his See, after he had been deposed by the Council of Antioch, the Emperor being himself a heathen. The right of appointing judges on appeal in purely spiritual questions was exercised by Justinian, and no complaint was made on the part of the Church. The power indeed which princes exercised with universal allowance, over ecclesiastic Synods by summoning, by presiding, by affirming, annulling or altering decrees, included authority over inferior courts. If they had such undoubted control in the case of the higher jurisdictions it could hardly have been beyond their province to correct the sentence of the lower.

* Balsamon quoted by De Marca.

SECTION 6.

MUCH of what has been cited from ancient Canons, on the other side, is irrelevant. When they enjoined that spiritual causes should not be carried to a civil tribunal, it was a direction very necessary for the time, but which has no application now. It would be a parallel case if it were proposed to transfer to the courts in Westminster Hall the suits which have been hitherto of Ecclesiastical cognizance. But there has been no attempt to disturb the limits of the two jurisdictions. They remain as distinct as they have been at any time since they were first divided by William the Conqueror. The hearing of appeals does not supersede the authority of the Courts from which they are brought. Every Bishop remains *judex ordinarius* in his diocese, with full power to decide causes by his chancellor in his Consistory Court, as the Metropolitan in his Court of Arches, by his principal official. The privilege of the Church in this respect is not invaded. The ordinary jurisdiction is no more taken away by the application of the Queen's Supremacy in the case of appeal than it had formerly been by that of the Pope. It was specially provided by statute (25 H. VIII. c. 20) that Archbishops and Bishops appointed in the prescribed manner "shall do and execute every thing touching the same as any Archbishop or Bishop of this realm without offending the prerogative royal of the Crown,

&c.” As it was declared by the statute of the preceding year that “the Body Spiritual usually called the English Church judge all such matters as belong to them.” Ordinary spiritual jurisdiction which was taken from the Ecclesiastical Courts by 17 Car. 1, c. 12, was restored by 13 Car. 2, c. 12. Their power is expressly recognized, and frequently referred to, in subsequent statutes, as well as the ecclesiastical laws which form a separate body of jurisprudence and govern the proceedings of Courts Christian. There has not been any question about taking causes from the ordinary jurisdiction of the tribunals to which they belong. Some indeed have been removed from the spiritual cognizance to the civil, and with good reason, because the subject matter is suitable to the latter, and not to the former, which was occupied too much with questions from which we ought to rejoice that it is now relieved. Causes properly ecclesiastical go to the courts which have for centuries had the hearing of them, to be pleaded by advocates who have been trained in the requisite learning, and before judges who are fully capable of deciding by their knowledge of laws and precedents ; just as cases are heard in the Queen’s Bench or in Chancery, subject to appeal, which no one however alleges to be destructive of the jurisdiction of these courts. There is the same power of appeal in ecclesiastical causes, and justice requires that there should be, but the jurisdiction of the lower court is no more destroyed in the one case than in the other. We may well

admit the truth of Lord Coke's words, "that this kingdom hath been best governed, and peace and quiet preserved, when both parties, that is, when the justices of the temporal courts and the ecclesiastical judges have kept themselves within their proper jurisdiction without encroaching or usurping one upon another: and where such encroachments or usurpations have been made, they have been the seeds of great troubles and inconvenience." And in the same way we might speak of keeping the limits of equity and common law distinct, without at all touching the question of appeal to the corrective power over both, which resides in the Supremacy. The citation of canons which simply forbid that spiritual trials should be held in civil courts is beside the purpose. If it could be proved that princes neither claimed nor received the power of hearing such causes on appeal, it would be very much to the point; but this is impossible, for this superintending and corrective power was certainly exercised, and without objection on the part of the Church. Some canons which forbid the carrying of causes to the Emperor, forbid equally that application should be made to the highest ecclesiastical court; as, for example, the Sixth of Constantinople ordains that "if any one dare trouble the Emperor's ears, or the Temporal Judicatures, or a General Council, neglecting the Bishops of the diocese, he shall by no means be allowed to give information, as being one that throws contempt and reproach upon the Canons, and subverts the ecclesiastical or-

der." The purpose is evidently not to deny authority to the Prince, but to preserve that of the Bishop. With the same intention, a Council long afterwards forbade the making appeal to any but the immediate ecclesiastical superior. But the mere letter of a Canon is not much to be trusted for the contemporaneous practice of the Church. We shall often find the view which history gives, to be very different. After a certain period also the struggle commenced between the civil and ecclesiastical powers, and then the decrees of Councils became not so much the assertion of an ancient right as the advance of a new claim.

Again, there have been many instances adduced in which the objection was really to the hearing of ecclesiastical causes by princes in their own persons, and when we remember that besides being burdened with great and difficult affairs, many of them were unfit by the imperfection of their knowledge, and the incompleteness of their Christian character, we cannot feel any surprise that the proposal should have been often declined on the one side, or met by protest on the other. Athanasius and Hosius remonstrated in bold and earnest language against the interposition of Constantius, but then he was well known to be opposed to the orthodox tenets of these eminent Bishops.* So when the judgment of the Emperor Valentinian was rejected by Ambrose,† we

* Ath. Ep. ad Solit. p. 862.

† Lib. 5, Ep. 33.

must remember that he was very young, that he was unbaptised, and that he held opinions which the Church had condemned. But there is not among ourselves any personal intervention of the Sovereign in the administration of justice. All judges act by the Queen's commission. It is the source and warrant of their jurisdiction, and they have no authority but what they derive in this way. But since the days of James the First, no prince has sat on the bench to join in delivering judgment. It has been held to be irregular and unconstitutional; unless however this were to become the usual practice, or rather unless the Sovereign were to claim at pleasure a sole authority in hearing and deciding, the cases produced would not tell upon the present question. The objections which were urged against carrying suits to the personal audience of the Emperors were very intelligible, whether they were admitted or not, but at present they have no force nor application when alleged as examples for our guidance.

SECTION 7.

THE age of Charlemagne, as we might naturally expect, affords much information on the question of ultimate control exercised by the royal power over decisions of the Church. He was during his lifetime its greatest temporal benefactor, and at his death he bequeathed three-fourths of his vast wealth to

ecclesiastical uses. While directing with wonderful wisdom and strength the wide dominions of which he was the head, he held all power in subordination to his own, and asserted his Supremacy over the spiritual polity just as much as over the civil. The principle of supreme authority runs through the whole history of his administration, and is to be read in every page of his laws. It is true that he allotted great powers of ordinary discipline to the Bishops, but it was always under the correction of his own ultimate jurisdiction. They received from him the highest respect and consideration, but their allotted part was to act as his instruments in the religious government of the empire. In his time at least it was very clear that the supervision of Church judicatures was with the State. What words could be stronger than those which he used ? “ *Ecce ego vestris petitionibus satisfaciens, congregationi Sacerdotum auditor et arbiter adsedi. Decernimus et Deo donante decrevimus quid esset de hac inquisitione firmiter tenendum.*” Again the language of the decree passed in the Council of Frankfurt is very distinct, “ *Statutum est a domino Rege et s. Synodo, ut Episcopi justitias faciant in suas parochias. Si non obedierit aliqua persona Episcopo suo de Abbatibus, Presbyteris, Diaconibus, &c. veniant ad Metropolitanum suum, et ille dijudicet causam cum suffraganeis suis. Comites quoque nostri veniant ad judicium Episcoporum. Et si aliquid est, quod Episcopus metropolitanus non possit corrigere vel pacificare, tunc tandem veniant accusatores cum*

accusato cum litteris Metropolitani, ut sciamus veritatem rei.”* The authority of this council has always been held to be very great, for it was attended by Bishops from France, Italy, and Aquitaine, as well as by legates from Adrian, who was at that time Pope. And again, “ Ut Episcopi, Abbates, Comites, et potentiores quique si causam inter se habuerint ac se pacificare noluerint ad nostram jubeantur venire praesentiam.”† It was not until after the death of Charlemagne, and during the various fortunes which attended his divided empire, that the rights of sovereigns began to be invaded. When they were gradually overborne, it was by the progress of a subtle, unscrupulous, and powerful antagonist in the papacy. The contest was not maintained by national churches against the sovereigns of the countries in which they were established, but by a power alien and injurious to both. And when we remember how many conflicting interests arose, and how many factions were busy in opposing each other, we may understand in what way an assailant who never overlooked an opportunity, would be able to make encroachments on the prerogative which the great Emperor so long and successfully vindicated. The central government, with its unity and force, was at an end. The machinery indeed which had been employed by Charlemagne, remained in use under his immediate successors, and his capitularies of which ecclesiastical

* Gieseler, ii. 241.

† Capit. Ann. 812.

ordinances formed so large a portion, were still the great treasury of jurisprudence; but the powerful mind and strong will were soon found to be wanting. The see of Rome took advantage of the change, and pressed its claims as occasion seemed to offer; of these the right of receiving appeals stood foremost. We may perceive by an example the way in which it advanced. About the middle of the ninth century, a bishop of Soissons was deposed in a provincial council, and no irregularity in the proceedings was alleged; but in order to avoid punishment, he appealed to the Pope, from his metropolitan the Archbishop of Rheims. The King refused to allow his appeal, and in another council, confirmed his deposition, and even confined him in a monastery that he might not go to Rome. Some time afterwards, the Pope addressed a letter to the King, asking that the deposed bishop might be permitted to prosecute his appeal. It was contrary not only to the will of his sovereign that he should do so, but to the laws of the realm, and the earnest representation of the eminent Archbishop who then filled the see of Rheims; and yet the will of the Pope prevailed, partly through stress of political circumstances, which made it inexpedient to incur his hostility, and partly through the influence of the decretals which had been recently promulgated, and the forgery of which no one seems to have suspected. It was a success obtained in the face of law and ancient custom, and it is the rather to be noted, because it represents the numerous class

of cases in which the see of Rome set at nought alike the authority of the Prince and the Church, and in which the latter was injured as much as the former. The Gallican liberties were afterwards sufficiently established.

The same contention went on throughout Europe. It was a struggle for independence on the part of sovereigns, and for dominion on the part of the Pope. The question of appeals is one which often occurred, because it brought the rival claims to issue. Between the empire and the papacy the conflict was the source of countless miseries. Its history is a long record of aggressions and resistances, which no one can follow without marking the hateful policy by which a Christian Bishop engaged the assistance of temporal princes, and spared none of the distresses and desolations of war to establish a spiritual usurpation.

In some kingdoms, the right of appeal to the civil power in ecclesiastical cases was always maintained. Thus Stillingfleet writes, "The Spanish lawyers hold that there lies an appeal to the King's courts, by his right of protection, in case of any violent proceedings in the ecclesiastical courts. Which violences are so many, as make such appeals so frequent and necessary, that whole volumes have been written about them. And this they say, is not introductory of a new law, but only declaratory of a natural right."*

* Eccles. Cases, ii. p. 100.

In England the authority for receiving appeals which concerned spiritual causes and persons, was always *de jure* in the Crown, as we have seen that it was in other countries and from the earliest ages. But it was one of those rights which were the most frequently invaded, and not always defended with success, on account of the skill with which the season of attack was chosen. "Yet," as Bramhall says, "the King of England, by the fundamental constitution of the Monarchy, hath plenary power, without the license, or help, or concurrence of any foreign prelate or potentate, to render final justice, that is, to receive the last appeals of his own subjects, without any fear of any review from Rome, or at Rome, for all matters ecclesiastical and temporal." A case is recorded as having occurred very early, in which the ecclesiastical Supremacy of British princes was very clearly exemplified. Wilfrid, Bishop of York, having been deprived by Theodore, Archbishop of Canterbury, appealed to Rome; where he was favourably received by Pope Agatho and the whole synod. He returned with a decree in his favour; but the King of Northumberland was so far from submitting to the encroachment on his authority, that he cast the Bishop into prison for a year. He was subsequently restored by another King of Northumberland; and, being a second time deprived and banished, he appealed again to Rome, and was finally restored to part of his former possessions, but against the will

of Cuthbert and other bishops.* The banishment and restoration of the Bishop took place under the authority of the King, and the partial restitution of his former preferment was not granted in obedience to the Pope, but for other reasons related by Bede and William of Malmſbury. At this time it was the Supremacy of the King, and not that of the Bishop of Rome, which the British clergy acknowledged. "When the Pope's letters in favour of Wilfrid were produced at the Synod of Nidd, when his prerogative from St. Peter was pressed, and compliance with the sentence enjoined, under the penalty of degradation, they took no notice of all this menace, but frankly appealed to the authority of their synod, and pronounced their own decrees unalterable. And though they came to an accommodation at last, out of regard to Elfede, and Berecfrid, in honour to the memory of the late King, and on the report of a miracle ; yet their keeping off all along, and recoiling at the orders of the Roman see, is sufficient to show their judgment in this matter."†

Among the laws of Edward the Confessor the following is one, "Whoever holds any thing of the Church, or hath his mansion upon church ground, shall not be forced to plead in any court but the ecclesiastical, although he have incurred a forfeiture, unless justice there fail, which God forbid." The

* Hody, *Hist. of Conv.* i. pp. 28, 32, 35.

† Collier, i. p. 120.

expression which occurs in this place, and which describes the occasion for the allowance of an appeal, is the more remarkable, because it corresponds with that which we find in the 8th of the Constitutions of Clarendon, where it is provided that application may be made to the King "if the Archbishop fail in doing justice," and with the words also of the Act of Submission, where an appeal to the King in Chancery is allowed "for lack of justice at or in any the courts of the Archbishops of this realm." We may conclude that the Royal Supremacy, acting in the case of appeals, and exercising final jurisdiction in spiritual causes was well known to English law. Through various causes it had been in a great measure superseded, and the revival of its exercise was another instance of the resumption of a right which had been invaded, and is in no respect an innovation. When the Convocation decided in questions of heresy, it was by authority which they derived from the Crown. It was the King's court of justice while executing this function, for it was convened by his writ.*

The case of John Nicholson, or Lambert, deserves observation. He was examined by Cranmer about certain opinions which he had received from Tindal and others, and which were then held to be heretical. Being urged to retract them, he appealed to the

* The statute 1 Ed. VI. c. 2, clearly explains the commission of courts ecclesiastical as well as civil. See page 25.

King, who resolved to hear the plea in person. And in a vast concourse of nobility, bishops, clergy, and others, the trial took place, and Henry himself maintained an argument against the prisoner. Lambert refusing to recant was condemned to die, Cromwell, as vicegerent, reading the sentence at the King's command. The appeal was received on the advice of Gardiner, the judges and king's council were present, and no objection was raised. The same thing had occurred in 1532, when a priest, imprisoned for Lutheranism, appealed from the Archbishop to the King. The case excited less attention, because it ended in the prisoner's discharge.* The instance is worthy of notice, not because the conduct of Henry can or ought to furnish any precedent, but because the application of the accused and the consent of the King and his legal advisers imply that the interposition of royal authority in such a case was not altogether a new thing. And if the appeal had been heard by judges deriving their power from the sovereign, instead of being received by himself in person, nothing could have been more consistent with justice, or ancient custom, or the rights of the crown. It may suffice to quote the clear and exact statement of Hooker. "There is required an universal power which reacheth over all, importing supreme authority of government over all courts, all judges, all causes ;

* Collier, ii. 70.

the operation of which power is as well to strengthen, maintain, and uphold particular jurisdictions, which haply might else be of small effect; as also to remedy that which they are not able to help, and to redress that wherein they at any time do otherwise than they ought to do. This power being sometime in the Bishop of Rome, who by sinister practices had drawn it into his hands, was for just considerations by public consent annexed unto the King's royal seat and crown. From whence the authors of reformation would translate it into their national assemblies or synods; which synods are the only help which they think lawful to use against such evils in the Church as particular jurisdictions are not sufficient to redress. In which case our laws have provided that the King's supereminent authority and power shall serve: as namely, when the whole ecclesiastical state, or the principal persons therein, do need visitation and reformation: when in any part of the Church errors, heresies, schisms, abuses, offences, contempts, enormities are grown, which men in their several jurisdictions either do not or cannot help: whatsoever any spiritual authority or power hath done, or might heretofore have done, for the remedy of those evils in lawful sort, as much in every degree our laws have fully granted that the King for ever may do, not only by setting ecclesiastical synods on work, that the thing may be their act and the King their motion unto it, but by commissioners few or many, who having the King's letters patent may on the virtue thereof execute the

premises as agents in the right not of their own peculiar and ordinary, but of his supereminent power. When men are wronged by inferior judges, or have any just cause to take exception against them ; their way of redress is to make their appeal ; an appeal is a present delivery of him that maketh it out of the hands of their power and jurisdictions from whence it is made." *

SECTION 8.

THE question before us reaches not only to the Royal Supremacy as the source from which the appellate jurisdiction is derived, but also to the choice of those by whom it is to be exercised, and the latter is indeed the more immediate and practical consideration. It is proved sufficiently that the right to give the requisite authority is in the Crown, acting by statutes of Parliament, and forms part of the prerogative, which, by the terms of submission, the Church is bound not to resist ; but it still remains for determination, in what hands this power of final judgment should be lodged ; the constitution of the Court is at least as important as its commission. A question indeed of graver importance could hardly be proposed at this time. It was not much considered at the period of the great changes introduced by the Re-

* B. 8. W. fol. 431.

formation, because the civil power was chiefly interested in maintaining its independence of foreign interposition, and in vindicating its claim to execute supreme control over all causes. The controversy of the crown was with the Pope, and not with the Church at home. On the one side the Supremacy was fully admitted, on the other the exercise of jurisdiction was left mainly in the hands of ecclesiastics; this was not however by the letter of any statute, but as the result of mutual good understanding.

The powers which had been assured to the Crown in the reign of Henry VIII. for jurisdiction, visitation, reformation, &c. were restored in the time of Elizabeth, and a former restriction by which it had been provided that half the number of persons named in the commission for executing them should be clergymen was omitted, and any native born subject might be now appointed. By 1 Eliz. c. 1, s. 18, the High Commission Court was established for executing spiritual and ecclesiastical jurisdiction. It remained in existence till the time of Charles I. when it was abolished by statute.* Of whom it was composed is not accurately known, and indeed no exact rule seems to have been followed. It comprised bishops and officers of state, civilians, and common law judges. It has never been revived; and the jurisdiction in spiritual causes *primâ instantiâ* has been since left to the ecclesiastical courts without that intervention

* 16 Charles I. c. 11.

192 *The Privy Council in place of the former Court.*

of the Royal Supremacy which was in use for so long a period. The Court of Delegates, *judices delegati*, was appointed by commission under the Great Seal for hearing appeals made to the King by virtue of the act 25 Henry VIII., c. 19. Its functions differed from those of the High Commission Court, in having no original jurisdiction. For the first seventy years it consisted of bishops to the exclusion of civil judges. From the middle of the seventeenth century, there was a considerable change in this respect, until in the time of Blackstone it was "frequently filled with lords spiritual and temporal, and always with judges of the courts at Westminster, and doctors of the civil law."

By 2 and 3 William IV. c. 92, the power of hearing appeals was taken from the court of delegates and transferred to the King in Council, and at the same time the judgment was made final by abolishing the power to issue a commission of review. In the following year, by stat. 3 and 4 William IV. c. 41, the hearing of appeals was transferred from the whole body of the Privy Council, to a court composed of the Lord President, together with two Privy Counsellors specially nominated, and such Privy Counsellors as are or have been Judges in certain courts, among whom is the Judge of the Prerogative Court of Canterbury. The Dean of the Arches, who is the Archbishop's principal official, in right of the latter office, receives appeals from the inferior ecclesiastical courts within the province. And from

his sentence the appeal is now carried to the Judicial Committee of Privy Council, as it was formerly to the King in Chancery, or rather to the Court of Delegates. Thus the case stands at present, but it seems indispensable that some farther change should take place, because the exercise of the appellate jurisdiction is called for in cases which were avowedly not in the view of the commission by which the erection of the present court was recommended. Questions of wills or marriages were likely to arise, but there was nothing to suggest that it would be called upon to determine in cases of heresy. For two hundred years, only three causes of this kind were brought before the Court of Delegates, and none of them came to a decision. The members of the Commission may well be pardoned for having overlooked the provision for what seemed so little likely to occur. It was equally forgotten by the Church, and no expression of alarm was heard on the part of Bishops or clergy. In the case which has given occasion for the review of the subject, nothing illegal has been alleged in receiving the appeal, nothing forced or overstrained in the application of the statute. The presence of the Prelates, who sat as assessors, as well as the pleading of another Bishop, who happened to be a party to the suit, were sufficient admission of the rightful jurisdiction of the Court; but it was generally acknowledged to be the application of law to a case which was not originally contemplated. As soon as the cause was entered for trial, this became

apparent, but the very circumstance which brought into notice what had been previously forgotten, made any change, for the time, impossible. But since the particular case has been adjudged, attention is properly turned to the constitution of the court before which it came for hearing, and those who are content as well as those who are dissatisfied with the sentence are well nigh agreed that some alteration is necessary. Persons who would firmly maintain the Royal Supremacy in all its fulness and integrity, desire to see it exercised in a manner which may be beyond the reach of any sound objection.

SECTION 9.

It has been proposed to transfer to Convocation the power of hearing appeals in spiritual causes, or rather this has been claimed as a function which belongs to that body by prescriptive right. How very little foundation there is for the claim, we shall soon discover, and it may well excite surprise that it should have been again advanced. At the beginning of the last century, the lower clergy, being desirous that the writings of Whiston should be authoritatively condemned, proposed the censure of himself and his book in Convocation. The Archbishop, who acted throughout with great wisdom and moderation, drew up an address to the Queen, which was signed by the Bishops, praying her Majesty to take the opinion of

the Judges on the legality of the course proposed. The case was referred according to this petition, and of the Judges, four delivered their joint opinion that Convocation had no judicial power, either original or appellate. “As the law now stands, the Convocation hath not any jurisdiction originally to cite before them any person for heresy, or any other spiritual offence, which, according to the laws of the realm, may be cited, censured and punished in the respective ecclesiastical courts or jurisdictions of the Archbishops, Bishops, and other ordinaries; who, we conceive, have the proper judicature in those cases; and from whom and whose courts the parties accused may have their appeals; the last resort wherein is lodged in the Crown. In which statute for citing out of the diocese, and in the others, as far as relates to appeals for such offences, no notice is taken of the Convocation, either as to jurisdiction or appeals. Nor doth it any where appear to us in whom the pretended judiciary power of a Convocation, either before or since the said statutes (if any such they ever had) resided; whether in the whole body of the Convocation, or in part, &c.” The other eight judges, with the Attorney and Solicitor General, gave it as their opinion, that the law books speak of a jurisdiction proper to be exercised in Convocation, and that no subsequent Act of Parliament has taken it away. But two things are to be observed, which make this opinion valueless in support of the office which it has been proposed at this time that Convocation should

be called upon to exercise. In the first place, it gives no assistance in determining how the judicial power should be exercised, whether by the whole body or only by a part. This point is also avoided in the letter of the Queen, by which proceedings were authorized. And in the next place, there is a careful reservation of the right of appeal to the Crown, "We are humbly of opinion, that of common right there lies an appeal from all ecclesiastical courts in England to your Majesty, in virtue of your Supremacy in ecclesiastical affairs, whether the same be given by express words of any Act of Parliament, or not: And that no Act of Parliament has taken the same away. And consequently that a prosecution in Convocation, not excluding an appeal to your Majesty, is not inconsistent with the statute of 1 Eliz. chap. 1. but reserves the Supremacy entire," &c. So that if, acting on the more favourable of these two opinions, Convocation were to undertake the hearing of spiritual causes, the only effect would be, to interpose another stage of costly procedure before the appeal would be carried to another court for final hearing. No lawyer will be found to venture an opinion that Convocation has the right of giving a final decision in any suit. It would be an invasion of the Royal Supremacy too palpable to be defended. When the Court of High Commission was suppressed, provision was made that the erection of any future court with like powers should be null. The Archbishop may indeed hold a Court of Audience,

for which he is specially empowered by statute.* And he may cite any person out of his diocese, if the proper Ordinary will not convene the party sued, but in this case also provision was made for appeal to the Crown. But even if the power of final judgment were conceded to Convocation, there is no agreement of opinion as to the persons by whom it should be exercised. It has been very confidently affirmed, that the jurisdiction belongs to the house of Bishops, but precedents are very much opposed to such a conclusion. Even before the Reformation, Convocation exercised its judicial functions very rarely, but there are three cases recorded as having occurred early in the fifteenth century, none of which give the least countenance to the notion of any exclusive power in the Bishops. On the 26th of January, A. D. 1400, a Convocation was held at St. Paul's, in which the Archbishop presided, the account of which we may take in the words of the learned and accurate Dr. Hody. "In this Convocation W. Sawtre was condemned for heresy, and burnt in Smithfield. And here it is to be observed that the sentence passed upon Sawtre, ran in the name of the whole Convocation, not of the Bishops only, but of the inferior clergy also. And the same I observe in all trials in Convocation, that the lower clergy are not the accusers or impeachers only, as is commonly thought, but they always sit judges together with the Bishops.

* 23 Henry VIII. c. 9, s. 3.

Such, it seems, is the nature of an English Synod." * Again, on the 17th of February, A. D. 1409, a Convocation was held, in which "articles were exhibited against J. Badby, for heresy, for which he was condemned by the Archbishop's sentence, and burnt in Smithfield." † The case of Lord Cobham occurred only a few years later. Walsingham says, that the Archbishop was enjoined, in behalf of the whole clergy to proceed against him. Application having been made previously to the King on account of the station and credit of the accused, and leave having been obtained, he was cited to appear, and after farther process he was excommunicated, and finally condemned. The trial began in Convocation, but it ended before the Archbishop after Convocation had been dissolved, and in his name the sentence was passed. Wake, whose information on this subject was very extensive, writes thus, "Here then a question may arise that will deserve to be considered on this occasion: and that is, when any one is to be convicted of heresy, or of any other the like ecclesiastical crime, in Convocation; who it is that judges him? Whether he is to be judged by the votes of the two houses? or, whether he is to be judged by the upper house alone, and the lower to stand in the nature of prosecutors against him? or lastly, whether the Archbishop alone does properly judge; and the rest concur, as assistants to him, and assent to what he does?"

* Hody, *His. Conv.* part. iii. p. 247.

† p. 254.

In answer to which enquiry, if I may be allowed to offer my own conjecture ; I do conceive, that in such cases as these, it is not so much the Convocation that judges, as the Archbishop in Convocation."* This view will appear the more probable, if we recollect that the sentence was pronounced by one who not only held the rank of Metropolitan, but that also of *legatus natus* ; and this may also explain why he possessed a power of final judgment which has never belonged to his successors since the Reformation.

But independently of any legal question, and of the other perplexities which surround the case, the very constitution of such an assembly renders it singularly unfit for any judicial function. It is composed of persons prepared neither by study nor habit, for handling the difficult questions which might at any time arise ; the necessary learning forms no part of the training of the English Clergy. Men of piety and great usefulness we may well believe them to be, but able canonists they certainly are not. The calm and unbiassed judgment also which gives so much of its value to any decision, could not be expected under the circumstances of a large representative assembly. We may doubt what would be the best court for the final decision of ecclesiastical suits, but it can hardly be questioned that Convocation would be the worst. We may rejoice that the intervention of the Supremacy prevents the proof of its unfitness by

* Authority of Christian Princes, p. 117.

actual experience. It is an instance, and the careful student will find many more, in which the Royal Prerogative has been for the blessing of the Church.

SECTION 10.

INSTEAD of carrying appeals to Convocation, whatever that might really imply, and we have seen how doubtful it is, they might be referred to a court composed of all the English Bishops. The proposal is recommended by some whose words have every claim to our respect, and yet it is open to very grave objections. Its mere novelty is a very unfavourable circumstance, because the age, and the particular occasion make innovation very hazardous. Of such a convention of Bishops the Church has known nothing hitherto. In the statute for "the restraint of appeals," it is provided, sect. 9, that in cases which touch the King, the question shall be referred to the Bishops, and other prelates of the upper house of Convocation within the province where the matter of contention shall begin. But, as we know, this statute was never operative and was superseded by the Act of the following year. Even if it had taken effect to the widest extent, it would afford no example of a Court formed by the collective body of the English Bishops, which would be under our present circumstances an assembly anomalous and unprecedented. It would not be a provincial Synod, because it would

contain Bishops who belong to both provinces ; it would not be a national Synod, because there is no one whose position qualifies him to preside in a Council having such a character, and the Church has made no provision for its being summoned. The Archbishop of Canterbury has great power, not only as Metropolitan, but as Primate of all England, yet he does not possess the privileges of a Patriarch, and has no claim to preside over the Bishops of another province. The power might of course be annexed to his see, but it would be in the face of all former instances, and a very hazardous interference. When national Synods were held in England, it was by legantine authority, which, as we know, suspended the ordinary rights of Metropolitans. An Archbishop of York, or a Bishop of Winchester, might in this character preside in a Council attended by all the Bishops of the English Church ; but since that which was summoned in 1555 by Reginald Pole as legate a latere, no such assembly has been convened. The Church before the Reformation submitted to an authority which claimed to be supreme ; but if the attempt were made at present, and under such different circumstances, and if the Metropolitan of the northern province were to be authoritatively summoned by the Archbishop of Canterbury, it would be impossible to prevent the expression of dissatisfaction. Those who are conversant with our ecclesiastical annals, will see that the apprehensions of jealousy are not without foundation. The contests about privi-

lege between the heads of the two provinces were perpetuated for centuries, and reached the whole range of subjects on which collision could possibly occur. They began very early and were renewed age after age ; they were brought before Parliament, and were the subject of embassies to Rome ; Councils were summoned for their suppression, and the whole business of Church legislation was sometimes at a stand still, because these rival claims had not been adjusted. The contention has long since been forgotten, but if the occasion were furnished, it would soon be renewed, for these are not the days in which subjects of strife are likely to be overlooked.

Again, in the proposed Court of Appeal, suffragan Bishops would be called upon to revise the sentence pronounced by their Metropolitan in his Court of Arches, and this has not been the custom of the Church. Since the sixteenth century no such case has occurred, and before that time it was so evidently opposed to the tone of ecclesiastical government, that the proposition could hardly have been. Stratford and Arundel, Chichely and Warham delivered constitutions authoritatively in assemblies of Bishops, but that the sentences of their courts should be there revised, seems never to have been suggested. Questioned they might be in Parliament, or before the King in Council, but not by their suffragans. The proposal is new, and although an act of the Supremacy might give the required authority, it would hardly satisfy even those whom at first it seemed likely to conciliate.

But besides the want of ancient authority for the proposed court, which would make it unacceptable to some, there are practical objections which would weigh with many more. It would have no other business than to decide certain points referred for its judgment by a superior court, just as the Court of Chancery from time to time directs an issue to be tried at common law. And it would be a very great disadvantage to have questions for reference drawn out and limited, and the matter and form determined before they came to the hearing of the episcopal body ; so great indeed that it would take away much of the weight which their decision ought to carry. Nothing could be more difficult than, in cases which might probably occur, to separate between the different portions which would require to be dealt with distinctly ; facts to be retained for the judgment of the Committee of Council, and opinions to be remitted to the Court of Bishops. The limit is not so clear and obvious that the separation could be readily made. What seem under one point of view to be opinions, present themselves under another as facts ; and those who have the right to determine under which head any particular portion of the subject matter should be ranged, exercise so great an influence, that what would remain for others would be insufficient for any satisfactory conclusion. The office proposed for the bishops would not be the most dignified, nor would it be the most useful ; for it would leave, after all, the main issue to be determined by a court with less ecclesi-

astical character than the present, for the prelates would not be summoned even as assessors if a case were to arise similar to that which was lately decided. They would be called in to advise upon a particular point, instead of being counsellors upon the entire question.

Although the Episcopal body would thus be limited and impeded in their judgments, their interposition, even to the proposed extent, as sole judges of particular points, would be sufficient to make the decision unsatisfactory. The suit remitted to the judicial council on appeal must have already passed through the ecclesiastical court, which possesses the chief authority, and perhaps previously through that of the diocese. But an appeal from any court implies the rehearing of the cause in question, beyond the limits within which it was in the former instance decided. In a certain sense the Royal Supremacy would, according to the proposed scheme, have an effect, because it would give jurisdiction to all engaged in the judgment; and yet it would not afford that protective interposition which its great function implies. The provision made for the correction of wrong, by the highest power known to the state, is not fully applied if the case is referred back in whole, or in part, to those against whose decision the appeal is lodged. The course proposed is not analogous to that of ordinary appeals from courts of equity or common law, because, although the appellate jurisdiction may in part be exercised by those who have

already adjudicated in the suit, yet their opinions and ways of viewing the subject are corrected by the judgment of others who have been differently trained.

There is a certain inconsistency to be charged on those who earnestly uphold the plan of such an episcopal court of review, and yet express themselves with equal force against the mode in which Bishops are appointed, which, as they contend, prevents the mind of the Church from finding its true expression. Whatever objections lie against the manner of appointment, though we shall presently see that they are not well founded, must, in mere consistency, be admitted against the enlargement of authority. If the one is wrong the other cannot be right. It cannot be denied that if a court composed only of Bishops were to exercise the right of hearing appeals, even to the proposed extent, it would be impossible to prevent the consideration of their individual opinions upon cases likely to come before them, from exercising a paramount influence in their original selection for their high office. Nothing would be more injurious to the Church than that the differences which are inevitable, and are not peculiar to any Christian communion, should be made more patent and obvious. Yet this would be among the results.

SECTION 11.

OTHER ways have been suggested for meeting the difficulty which the Church has to encounter at this time, but they do not require any particular consideration. Defences which are thrown up on a sudden emergency seldom have their foundation deeply laid, or their walls well cemented.

The plan which proposes to remedy the defects in the present appellate jurisdiction, with the smallest amount of change, has a strong claim to favourable reception. Happily it is that which is the most likely to be adopted, and which will also afford the largest amount of general satisfaction. In the present court to which ecclesiastical appeals are carried, there are none of the clergy who have a right to be present, and at the same time there may be members of the Court who do not belong to the communion of the Church by whose doctrine and discipline they are called upon to decide. These are the only objections with which there is any considerable and decided sympathy; and these are so reasonable, that the plea for their removal is very unlikely to be disregarded. There is indeed strong ground for believing that no opposition would be offered by the Government to such an alteration in the constitution of the present Judicial Committee of Council, as that, in cases of ecclesiastical appeal, the Bishops who are privy counsellors should for the occasion be members

of the Court; and that none of the lay members should join in hearing such causes, unless they also belong to the communion of the Church of England.* The presence of Bishops at the hearing of appeals was contemplated by those on whose report this duty was transferred to the Privy Council. The change was recommended, in the words of the Commission, because "there are Lords spiritual and temporal as well as lawyers of every Court in that Council." When the Act of the following session substituted the Judicial Committee for the whole body of the Privy Council, the occurrence of ecclesiastical suits was not contemplated. In ordinary cases we may be glad that the Bishops are not called by any fresh claims from the great and peculiar duties of their office; but the want of provision for those exceptional occasions in which Church doctrine and discipline are in question, and in which their presence is urgently required, was by general admission an oversight, the correction of which is not likely to be opposed. It is but adding to the present number of

* In the debate on the Bishop of London's bill the Marquis of Lansdowne is reported to have said that "he should have no hesitation in stating that, whilst he could not sacrifice the principle of the Judicial Committee, or the prerogative of the Crown, as hitherto exercised upon these subjects, he thought it might be desirable for the purpose of showing to the public that these questions would not be determined without the great authorities of the Church being fully heard, that it should not be left by the Crown to the President of the Council (as had been the case with himself last year), to invite the attendance of those right reverend prelates in the Privy Council, but that any right reverend prelates who were

the judges, certain others *pro hac vice*, who possess special qualifications. It is not necessary to speak of the proportion which should exist between the episcopal and lay members of the Court, as if there were an opposition of interest between them, for if all are within the communion of the same Church, it is to be assumed that they will be equally earnest in promoting its welfare. And that no persons who do not possess this qualification should take part in such a jurisdiction, commends itself to our reason and sense of justice; the restriction would probably be approved, not least by those who might now be called upon to discharge functions, which they cannot but feel to be unsuitable.

And if such a reconstruction of the court of appeal receive the consent of the State, there is every reason why it should be accepted willingly and without hesitation by the Church; not as if it were a compromise to which it is compelled to submit, but as a wise conclusion to a difficult and perilous debate. If laymen alone are appointed to decide in the last resort, it would be justly displeasing to the Church, if ecclesiastics alone, it would neither satisfy the mind of the nation, nor reach the necessities of the case.* But if the jurisdiction were jointly exercised

Privy Councillors should, *de jure*, be members of the Judicial Committee. He also thought it would be well, for the satisfaction of the Church, that no member of the Privy Council not being a member of the Established Church should sit upon that Committee."

* On a former occasion the Archbishop expressed himself in words of the greatest weight, and in which the immense majority

by clergy and laity, its decisions would carry the utmost weight ; and, if a cause were moved from the Court of Arches to such a tribunal, it could not be said to have travelled at all out of Church limits ; the judges before whom the plea would be held, being partly ecclesiastics of the highest order, and partly lay Churchmen, whose legal education makes their presence indispensable. That the Bishops should have an authoritative voice in what so intimately concerns the well-being of the spiritual body whose government is committed to their hands, seems too plain to require any proof beyond the statement of the case ; but that they are capable of discharging the judicial functions without the co-operation of experienced lawyers, one would hesitate to affirm. It is no impeachment of the respect which is, on all accounts, due to the Bishops of the English Church, if we question their ability to deal competently with arguments delivered by those whose daily business it has been for years, or to sit in appeal on the decision

of the Clergy as well as of the lay members of the Church cordially concur. "The present state of the law in what concerns the discipline of the Church is confessedly defective ; and the tribunal before which charges of heresy and false doctrine are ultimately to be brought, especially stands in need of alteration. It cannot be satisfactory to the public that a Court by which cases of unsound doctrine are decided should consist wholly of laymen. I should be as far from desiring that it should consist wholly of Ecclesiastics. But a mixed board, as provided in the projected measure, consisting partly of ecclesiastical and partly of judicial functionaries, will best meet the circumstances of the case, and best satisfy public opinion."—Hansard, vol. cviii. p. 1387.

of a Judge who has grown grey in administering a difficult branch of law. There is a certain training of the mind, only to be perfected by long practice in the Courts, and yet on which, in a great degree, depends the power of keeping steadily in view the exact issue which is to be tried, and determining how much of the matter urged in pleadings is relevant, or what weight is to be given to the precedents produced, and how far they have been subsequently confirmed or overruled, with much besides, which comes only by practical legal education. The amount of learning required in an ecclesiastical judge is so great that the acquisition of it is incompatible with the demands made in these days upon the time and thought of those who occupy places of great charge in the Church. According to Bishop Gibson, who is no mean authority, the necessary information must be sought in Acts of Parliament, in the provincial and legantine constitutions, with the Commentaries of Lyndwood and Athon, in the Canons of 1603, the rubrics, the thirty-nine Articles, the reports, the practice of the Church as appearing in the records and registers of the Episcopal Sees, and in the body of the foreign Canon law. The constitutions of which the Bishop speaks, are those which were made by the Archbishops of Canterbury, from Langton to Chichely, and on which Lyndwood composed his Commentary ; and those which were enacted by Otho, who came to England as legate A. D. 1237 ; and by Othobon, who bore the same office A. D. 1268, illustrated by John de Athon, who lived in the fourteenth

century. "It is impossible to reach the true design (and by consequence the true meaning and extent) of any law ecclesiastical or temporal till we know how the law upon that head stood before."* By a special clause in the Act to which such frequent reference has lately been made, (25 Henry VIII. c. 19) it was enacted "that such Canons, Constitutions, Ordinances, and Synodals provincial, being already made, which be not contrariant nor repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King's prerogative royal, shall now still be used and executed as they were afore the making of this Act." It was provided by this statute that there should be a revision of ecclesiastical laws. In the reign of Edward the Sixth the *Reformatio legum* was prepared by Cranmer, Goodrick, Taylor, and others. It was brought before Parliament in the reign of Elizabeth, but never received the Royal confirmation. The old Canon law remains still in force, except so far as it is contradicted by later Canons, or is contrary to the common or statute law of the realm.* The knowledge which is required for the determination of such spiritual suits as may arise is greater than can be mastered by those whose many and burdensome duties lie in another direction. Dr. Godolphin writes thus: "After princes had granted to ecclesiastical persons their causes and their consistories, and circumstances varying those

* Gibson's Codex, pref. 5.

† Vide Johnson's Can. pref. 29. Stilling. Cases, ii. 4.

causes into a more numerous multiplication than were capable of being defined by former precedents, necessity called for new decisions, and they for judges experienced in such laws as were adapted to matters of ecclesiastical cognizance, which would have been too prejudicial an avocation of Bishops from the exercise of their more Divine function, had not the office of Chancellor, in determining such matters, been an expedient to prevent the said prejudice or inconvenience.”* The judges of whom he speaks are by law appointed to preside in the diocesan court. “Chancellors are so necessary officers to Bishops, that every Bishop must of necessity have a Chancellor: and if any Bishop would seem so complete within himself, as that he need not a Chancellor, yet may the Archbishop of the province, wherein he is, compel him to take a Chancellor; or if he refuse so to do, put a Chancellor on him. For the law doth presume, it is a matter of more weight than one man is able to sustain, to govern a whole diocese by himself alone. And therefore, howsoever the nomination of the Chancellor be in the Bishop, yet his authority comes from the law, and therefore he is no less accounted an Ordinary by law, than the Bishop is.”† If the cause, for the original hearing of which the law provides a judge of competent learning, might be decided afterwards by Bishops, on appeal, without such assistance, it would seem to be contrary to

* Rep. can. c. x. s. 2, quoted by Foster, p. 57.

† Ridley's View, p. 156.

the evident purpose of this provision. We may conclude that a Court which should comprise divines and canonists, civilians and common lawyers, would be most consonant with the spirit of former laws on this subject, and most advantageous for the ends of justice. "Since the law requires," says Foster, "that the Bishop shall appoint a person well skilled in the civil and canon law, to hear and determine causes cognizable in the Consistory Court; and since laymen so qualified are by law declared capable of that charge; it doth not seem to me so contrary to the natural reason of the thing, or to the general tenor of our Constitution, as that the principal professors of the common, civil, and canon laws, should be among the ultimate judges of the same causes by way of appeal." *

SECTION 12.

BUT it would be a most inadequate statement of the subject if we were to make the presence of lawyers in the final court of appeal for spiritual causes depend merely upon the necessity of the case, as if it were for no other reason to be desired than that they are the sole possessors of the requisite learning and experience. On other and perfectly independent grounds, their co-operation is in the highest degree important; and if a Church judicature were formed

* Examination of the Codex, p. 58.

214 *Church judicature imperfect without laymen.*

in which they had no place, it would be for that very reason imperfect and reprehensible. There are divine offices for which the clergy have been solemnly set apart, and with which no unordained person is at liberty to interfere. There are powers of the spirituality in which no secular authority has any right to interpose, such as the consecration of bishops, the ordination of priests and deacons, the ministry of the word and sacraments. There is no invasion, indeed, of these sacred and peculiar functions to be feared at this time. But while the work of the clergy, by which they deal publicly and privately with men's souls, is thus guarded from intrusion, there is nothing which constitutes them the sole judges of doctrine or discipline. This power forms no portion of that charge which is entrusted to them apart from others, and in which their lay brethren are forbidden to interfere. It is not a gift which comes by any separate channel to the clergy, but it belongs to the common standing of all Christian men, who participate in the gift of the Holy Spirit, and use ordinances of grace according to the end of their appointment. In the words of an ancient Pope, "*Fides universalis est ; fides omnium communis est ; fides non solum ad clericos, verum etiam ad laicos, et ad omnes omnino pertinet Christianos.*"* Our 20th Article, "Of the Authority of the Church," declares that "The Church hath power to decree rites or ceremonies, and autho-

* Pope Nicholas quoted by Bishop Jewel, Defence of Apol. 690.

ity in controversies of faith." But the preceding Article "of the Church," defines it to be "a congregation of faithful men, in the which the pure Word of God is preached, and the Sacraments be duly ministered according to Christ's ordinance in all those things that of necessity are requisite to the same."

We can do no better than to follow the pattern which Scripture furnishes, and it is very conclusive on the co-operation of the laity in the early acts of the Christian Church. When circumstances made the appointment of deacons necessary, "the twelve called the multitude of the disciples unto them," and when the proposal had been laid before them, we read that "the saying pleased the whole multitude,"* and then this new order was constituted. Few practical measures could have been more important, and it was adopted by the concurrence of clergy and laity, and the example is the more impressive, because the former included inspired Apostles in their number. It was the same in respect to legislation. A council was held for the settlement of a grave and urgent question. There were present not only Apostles and elders, but a multitude also of the brethren. And when the judgment in the case was pronounced, it was confirmed not only by the Apostles and Elders, but likewise by the "whole Church;" and the letters which were written to the Gentile

* Acts vi. 2, 5.

converts bore the superscription of the "brethren," as well as of those who held spiritual office.*

During the first 300 years of the Christian era, points of faith were ruled, and discipline was exercised in consistories, by clergy and laity, under the superintendence of Bishops. When Christianity became the established religion, the Emperors represented the laity, uniting all the legislative and executive power in their own persons. Their consent included that of their people, and for this reason the canons which they ratified became binding, which they are not among ourselves, unless with the consent of Parliament.

If it is contended that we ought to follow early precedents, and refer all causes which arise to the final decision of a synod, we shall find that in this as well as other countries the laity formed a component part. In the words of Sir Michael Foster, "It cannot be denied, that during the Saxon times there were some assemblies purely clerical, to which the laity do not appear to have been called. But as these were rare, so the matters transacted at them were not of general concernment; being such as related principally to the behaviour of the Bishops and their clergy, and in which the laity were not at all, or very little interested. But it doth not seem to have entered into the imagination of those who best knew the extent of ecclesiastical power, and were most concerned to support it, that alterations in our constitu-

* Acts xv. 12, 22, 33.

tion, of a public nature, and general concernment, relating even to matters purely spiritual, could be effected otherwise than by the ordinary legislature of the kingdom ; or at least by Councils held on special occasions : at which the great men of the laity ordinarily assisted.”* Our ancestors knew nothing of the jealousy of lay interference which is so prevalent among ourselves. Matters both of the Church and Commonwealth were often dictated and concluded in the same meeting “*communi consensu tam cleri quam populi, episcoporum, procerum, comitum, necnon omnium sapientum seniorum, populorumque totius regni.*”† State assemblies and councils of the clergy were so much alike both in the business transacted, and in the persons attending, that some which are called Parliaments might with equal propriety be termed Synods. Bede, as well as Matthew of Westminster, and William of Malmesbury, abound in examples.

At the Council of Herudford, under Archbishop Theodore, the acts of which are recorded by Bede, there were present not only Bishops and Abbots, but “*reges et magnates universi.*” At a Council under Berthwald, A.D. 705, held on the banks of the river Nidd, to consider the case of Wilfrid, the King and his great lords were present, as well as the clergy. At Calchuth, A. D. 747, “*duces et comites ;*” at

* Examination of the scheme of church power, p. 127.

† Spelman, Ann. 605.

Clovesho, A.D. 822 ; at Calne, and Amesbury, A.D. 975 ; at Eanham, A.D. 1009 ; and on many other occasions during the eleventh century we find the record of the higher clergy as present, together with “ primates, principes, duces, sapientes, &c.”* And at a Council at Feversham, held early in the tenth century, we read also of “ villani,” as well as of Bishops, Thaness, and Earls of the county of Kent, having attended.† And this union of clergy and laity in public assemblies lasted till the reign of Stephen, when a separation was promoted by Innocent II. who had excluded the laity from Councils at Rome, in pursuance of policy which has always found favour with the Papal government. The subjects which had been previously concluded by common consent were often of a purely ecclesiastical kind, such as receiving a mandate of the Pope, or ejecting the married clergy from monasteries, or determining a question of jurisdiction between the Archbishop of Canterbury and the Archbishop of York, or of obedience rendered by the Primate to the Pope without the King’s consent. It was not the power of legislation alone which was exercised, but the decision of such ecclesiastical suits as might be referred to their final jurisdiction. Thus we read that in the Council of Verulam, which was held at a very early period, “ Aderat populus et spectator futurus et iudex.”‡

* Spelman, i. 513, 530. † Hody on Conv. 1st part, p. 68.

‡ Bede, Hist. i. 17.

And it was the same in the ordinary administration of justice; the Bishop sat with the Earl or Sheriff, in the court of the county or of the hundred, until the Conqueror ordained that spiritual causes should no longer be cognizable by secular judges as they had been until this period. But even after this separation had formally taken place, questions which belong to church judicatures were frequently determined in Parliament; such as the contest between the Bishop of Lincoln and the Monks of St. Albans A.D. 1165, and between the Archbishop and the Monks of Canterbury, A.D. 1189. Questions about the marriage of the clergy, and the primacy of the Archbishop of Canterbury, disputes between the Crown and certain Bishops, the progress of Wicliffe's opinions, and other subjects of the same kind were disposed of in Parliament.

It need not excite any surprise that during this period laymen did not execute the office of ecclesiastical judge, because at the same time they were often superseded, even in secular courts, by the clergy, who were the learned men of the age. Thus Archbishop Hubert was chief-justice in the reign of Richard I., as Roger Bishop of Salisbury, had been in the reign of Henry I. In the time of John, Geoffrey, Archdeacon of Norwich, was one of the barons of the exchequer, and another Archdeacon was chancellor of England. The Bishop of Carlisle is mentioned among what we should now call the judges of assize, A.D. 1252, besides numerous other instances.

Learning has for centuries ceased to be the monopoly of any class ; and the study of the law is better followed by those whose calling is secular, than as it once was, by those who must have been hindered by it in their spiritual sphere of duty.

But the question which has been incidentally opened, reaches far beyond the point at which its consideration has arisen. That the lay judges should take part in the important jurisdiction by which ecclesiastical questions are to be finally determined, is, as we have seen, no more than their peculiar qualification makes needful, or than is prescribed by the tone and spirit of early precedents. But there is a principle involved which claims a broader application, and with which the well-being of the Church, or its usefulness, which is the same thing, is inseparably bound up. If it is to be God's agent among us for blessing to the people, and if it is to be, as we hope, the great defence against the social evils with which the age is menaced, its members must come into far closer union than they have yet attained. We must welcome the help of the laity without jealousy or suspicion, not desiring to use them as agents, but to work with them as partners in labour and hope. The more freely every sphere is laid open for our common efforts, except that only which belongs to spiritual ministration, the better will our prospect be of mutual understanding and harmony.

If the Royal Supremacy shall give commission to a court composed of clergy and laity, the effect will

reach far beyond the immediate interest at stake, and cannot but produce permanent benefit in witnessing to a great principle. It would be a lesson of duty to spiritual and secular persons embodied in an act of the highest authority which rules them both. In the midst of our disorders and divisions we might well rejoice if but one such memorial were committed to the enduring lines of a statute of Parliament.

CHAPTER III.

SECTION 1.

THE decision of ecclesiastical causes on appeal is the application of the Royal Supremacy which may be called the most critical, because the question of its exercise is brought to issue on a particular point; but the nomination to Bishoprics on the other hand is the case continually recurring, in which it is alleged that the privileges of the Church are disregarded; exciting less attention because of its frequency, but not on that account the less injurious. The nature of the wrong, against which the complaint is lodged, ought to be stated very explicitly, as well as the remedy proposed for its removal. There are vague and habitual ways of speaking, phrases by which the notion of injury and the denial of redress are suggested, without the precision and

exactness which the subject claims. If the mode which has been used so long in the English Church is to be denounced, we ought to have the grounds of its condemnation very clearly stated, whose original right it destroys and what ancient practice it violates ; we ought to be informed whether it is a modern claim of the Royal prerogative, or whether it has descended from time immemorial ; if it were to be abandoned it is indispensable that we should know what method is proposed in its place, by which the early precedents would be more closely followed, and the right of all persons interested more equitably consulted.

In order to form right conclusions upon the relation which the State bears to the Church in this important particular, we must recur to primitive ages. The wise and religious men, who secured the claims of princes in our ecclesiastical polity, have left ample proof that they never overlooked the witness of antiquity. When we find them not only consenting to the power of the civil Governor in choosing the chief pastors of the Church, but defending it against the assailants by whom it was attacked on opposite sides, we may reckon confidently on finding great support for their opinions in the history and the laws of the first centuries.

If we were to conform in the appointment of Bishops to the earliest model, we should lay open the election to all the clergy and laity of a diocese, or of a province ; and if that be thought impracticable, which indeed no one doubts, the nomination by the Crown

has the next claim of primitive use. The authorities by which the proof of these positions is afforded are very abundant. "When the Bishop of any city died, whose Church had store of clergymen to succeed; the Bishops of the same province that were nearest to the place (Cyp. lib. i. Epist. i.) by conference among themselves appointed a day to resort thither, and advertised both people and presbyters thereof at which time the clergy and laity assembling in the Church, so many Bishops as conveniently might (but under three they could do nothing) came thither; and there heard both whom the clergy named, and whom the city liked."*

In the words of De Marca "*Ceterùm si negotium istud referatur ad primam originem, morumque vetustæ ecclesiæ, et antiquorum canonum ratio habeatur, constans est illa sententia quæ solum testimonium et consensum designandi episcopi clero et populo tribuit, ipsam verò designationem sive electionem et judicium Metropolitano unà cum synodo provincialium episcoporum. In quo testimonio dando non reperio discrimen aliquod constitutum à veteribus inter clerum civitatis et populum. Æquo enim jure hac in parte utebantur, et utriusque consensus ad suscipiendum episcopum expectandus erat.*"† And again, "*Certum itaque est episcopos ante concilium*

* Bilson's perpetual government of Christ's Church, ch. 15, p. 340.

† Lib. viii. 2. 2.

Nicænum electos fuisse cleri ac plebis suffragio, ut loquitur Cyprianus. Idipsum verbis minimè ambiguis docet Nicæna synodus, quæ sibi ipsi repugnare non potest, in epistola ad episcopos Ægypti scripta, quæ extat apud Theodoretum ; cui consentiunt Constantinus Imperator ad populum Antiochenum scribens et Athanasii apologia variis in locis.” †

“ The light at noon-day is not clearer, than that the election of ecclesiastical ministers was first in the people ; that afterwards it came into the princes’ hands, when they had received the Christian Faith, and had taken the affairs of the Church into their care : And lastly, that the elections rested in the clergy only, after the seculars had been excluded by the artifices of Gregory VII. and his successors.” †

In the life of St. Martin of Tours it is said, “ Mirum in modum incredibilis multitudo non solum ex eo oppido, sed etiam ex vicinis urbibus ad suffragia ferenda convenerat.” ‡

Another writer of great authority explains why so much was left to the people “ cui potissimum explorata sunt,” are his words “ vel virtutum insignia, vel vitia eorum, qui candidati sunt sacrarum dignitatum. Multa fallunt episcopos, quæ plebem non fallunt, sive in vitio, sive in laude posita privatorum gesta. Hac ergo libertate, immo et hac necessitate denu-
dandi, quidquid quisque rescisset de moribus et factis

* Lib. vi. 2. 4.

† F. Paul, on benef. 157.

‡ Sulp. Sev. vit. c. 7.

eorum, qui ad episcopatum invitabantur, videbatur electio in plebis potestate esse." * Origen founds the right of the people in episcopal elections upon the words of St. Paul, that "a Bishop ought to have a good report from them that are without." 1 Tim. iii. 7; and others on the apostolic example which was furnished in the election of Matthias by the company of disciples. Acts i. 15.

It was an authoritative part which belonged to the body of the faithful in the choice of their Bishops; as Bingham tells us "this conjunctive power of clergy and people was not barely testimonial, but, as Bishop Andrews and Mr. Mason assert, a judicial and elective power, by way of proper suffrage and election; and that as well in the time of Cyprian, as afterwards: For Cyprian speaks both of testimony and suffrage belonging to both clergy and people: and says farther that this is a just and legitimate ordination, which is examined by the judgment and suffrage of all, both clergy and people. So that they were then present at the choice of their Bishop, not merely to give testimony concerning his life, but as Bishop Andrews words it, "to give their vote and suffrage in reference to his person." †

Pope Celestin decreed "Nullus invitis detur Episcopus, cleri, plebis, et ordinis consensus requiratur." ‡

* Thomassin, p. ii. lib. 2. c. 1.

† Antiq. iv. 2.

‡ Ep. ii. c. 5. quoted by Bingham, Antiq. iv. p. 2. who has col-

Both the fact and the reason were pointedly expressed by Leo the Great, “qui præfuturus est omnibus, ab omnibus eligatur,” by whom also these were declared to be the conditions of a legitimate election, “Vota civium, desideria populorum, honoratorum arbitrium, electio clericorum, ordinis consensus.”* As he wrote on another occasion, “Ille omnibus præponatur quem cleri plebisque consensus concorditer postularet.”† The fourth Council of Carthage decreed that in the appointment of Bishops, the clergy, laity, provincial prelates, and Metropolitan, should concur. The confirmation by the latter was required as soon as the provincial system became established.

Cyprian, who is a great authority on this subject, tells us that a Bishop is to be elected, “de universæ fraternitatis suffragio, de Episcoporum qui in præsentia convenerant iudicio.”‡ Again, “Factus est Cornelius Episcopus de Dei et Christi ejus iudicio, de clericorum pene omnium testimonio, de plebis quæ tunc affuit suffragio, et de sacerdotum antiquorum, et bonorum virorum collegio, &c.”§

St. Chrysostom, St. Athanasius, and many others are expressly declared to have been chosen by the general voice of clergy and laity. St. Ambrose was accustomed to speak of the people of Milan as being

lected many authorities. See also Mason on the Consecration of Bishops; Stillingfleet, Unreasonableness of Separation; Thomassin, p. 11. lib. ii. c. 2; De Marca, lib. viii. c. 2.

* Ep. 89. † Ep. 84. ‡ Ep. 4. § Ep. 52.

in one sense his fathers, because they had chosen him to be their Bishop.

Gratian says, “electio clericorum est, petitio plebis.”* But there is no primitive authority for the distinction which he makes, for as Bingham writes, “Whatever power the inferior clergy enjoyed in the election of their Bishop, the same was generally allowed to the people or whole body of the Church, under the regulation and conduct of the Metropolitan and Synod of provincial Bishops. For their power whatever it was, is spoken of in the very same terms, and expressed in the same words. Some call it consent, others suffrage or vote, others election or choice; but all agree in this, that it was equally the consent, suffrage, vote, election, and choice both of clergy and people.”†

The offices of different parties in the appointment of a Bishop at the beginning of the twelfth century are briefly expressed by one who wrote about that time, “Eligente clero, suffragante populo, dono regis, per manum Metropolitanani, approbante Romano Pontifice,”‡ but at this time, considerable departure from the earliest model had taken place, especially by the intrusion of the Roman claim.

* Decret. 1. dist. 62.

† Book iv. c. 2.

‡ Ivon, Bishop of Chartres.

SECTION 2.

THE right which the people enjoyed in episcopal elections by original custom, whether it be described as choice, suffrage, or consent, was never denied; but it was not exercised at all times and in all places in the same manner or extent. One interest suffered occasional encroachment from another; sometimes the popular influence preponderated; sometimes the power of the magistrates, or the authority of Bishops and Synods. Canons of Councils were passed in restraint of the privilege, such as the fourth of C. Nice, the nineteenth of C. Antioch, the twelfth and thirteenth of C. Laodicea, which however could not have been intended to exclude the laity, since we find elections held for ages afterwards in which their part was admitted without any question; but it is certain that there was a strong necessity for some change. The limitations which were gradually imposed do not prove any thing against the privilege as having belonged to the whole community by the earliest custom; they only indicate the evils which became inseparable from its exercise. While Christians were but few in number, and unendowed with any property, the office of Bishop might well be conveyed by the whole body of the faithful. No tumults were likely to occur, and there was little danger of undue influence being employed, to obtain an office which brought with it the certainty of peril. But when the

Church became greatly enlarged in numbers, and enriched by possessions, the case was altogether changed. "Everywhere," says Bishop Bilson, "seditions increased so fast, that hardly could a Bishop be quietly chosen, which made Austin in his life-time contrary to the canons to elect his successor. I know, (saith he) upon the deaths of Bishops, the Churches are usually turmoiled by ambitious and contentious persons which I have often seen and sorrowed. (August. epist. 110.)" *

"Sometimes the inconveniences were no less by elections falling on people disaffected to the Government, and such as entertained secret correspondence with the enemies of the State, which, during the Western confusions, were never inconsiderable: or otherways, by elections falling on such who afterwards attained to great popularity, which they applied to usurp the power of the magistrates, and then to incite the people to support their innovations. These distempers produced an edict, that no person elected should be consecrated without the approbation of the prince or magistrate, reserving to themselves the right of confirming the great Bishoprics, such as those in Italy of Rome, Ravenna, and Milan, and leaving the care of the others to their ministers." †

In the contest which took place between the partizans of Damasus and Ursinus, who were rival can-

* Bilson, *Perpet. Gov. of Christ's Church*, p. 346.

† F. Paul, p. 25.

didates for the see of Rome on the death of Liberius A. D. 366,* many lives were lost, the Church in which many of the people were assembled, was destroyed, and for some days a perilous tumult prevailed throughout the city. Besides the occurrence of such violence, these ecclesiastical elections were carried by the same appeal to the passions of the multitude, the same solicitation and canvassing, by which the election to civil offices was so frequently determined; and simony in its grossest forms was commonly practised. When the Church was overrun by these disorders, and when religion itself was suffering from such scandals, the remedy was furnished by the intervention of princes, which was the exercise of the Royal Supremacy for the benefit of the Church. “Certo constat privatis dissensionibus et ambitiosis machinationibus compulsam fuisse Ecclesiam, ut imperatoriam interponeret electionibus potestatem.” †

By the law of Justinian ‡ it was provided that the common people should be excluded from episcopal elections, and that the clergy and chief men, clerici et primates, of the city for which the Bishop was to be chosen, should select three names, if so many could be found, out of which the Metropolitan was to choose the worthiest; and if no such transmission of names were made within six months, the choice was to be entirely in his power. The restraint of the

* Socrates, iv. 29.

† Thomassin, p. 11. lib. ii. c. 6.

‡ Nov. 123. 1.

popular right, which was thus confirmed, had been made long previously. Bishop Burnet, who describes the original mode of election, adds, "Thus it continued till Constantine turned Christian, but then a considerable change was made in elections; for instead of the rabble of the people, that grew very numerous and turbulent, the body of the town, called the community (where it was Christian, somewhat like our common councils) came to do that which the crowds did before. And this is all I think that can be meant by the canon of Laodicea, that the crowds were not to be suffered to make the elections of those who were to officiate in holy things."* And again, "When Athanasius died, we see the new method of election plainly described; for as Athanasius had recommended Peter to be his successor, when he died; so all the clergy (not only Presbyters) and those who were in the magistracy, and in dignities, elected him, and the whole applauded it. For now the government of the city being in the hands of Christians, those in authority with the clergy, made the choice, the rabble of the people only testifying their approbation."†

The law of Justinian, while it confirmed the restriction laid upon the people, which indeed was no more than necessary, at the same time vindicated the privilege of the laity; for about this period the synods of the chief cities had usurped the right of election

* Rights of Princes, p. 11.

† Id. p. 29.

from the clergy and people of the smaller places, and had taken it into their own hands; as some time afterwards a Council, which has on other grounds very slight claim upon our respect,* made a similar attempt, and by perverting a canon of the first Council of Nice, endeavoured to secure the whole power of election to the Bishops themselves.

SECTION 3.

THE claim of princes to interfere authoritatively in the election of Bishops had been maintained from the establishment of Christianity. In the reign of Constantine, and through the period of the Arian controversy, it was continually enforced. The Emperors left elections usually in the hands of the clergy and laity, yet interfering from time to time so far as to vindicate their right. And the Church seldom expressed any dissatisfaction. It was Donatus who used the expression “*Quid Imperator cum Ecclesia,*” for which he was reproached by S. Augustine.† “Upon the death of Maximian,” writes Bishop Bilson, “successor to Nestorius (Socr. lib. 7, cap. 40) lest again in the election of a Bishop variance should arise, and the Church be troubled, the Emperor Theodosius straightways (the body of Maximianus

* 2nd Council of Nice, A. D. 787.

† Ep. 166, quoted by Bp. Taylor.

not yet being buried) commanded the Bishops that were present to set Proclus in the episcopal seat. Pelagius being chosen Bishop of Rome, without the Prince's commandment, for that the city was then besieged, and no man could pass through the enemy's camp (Platina in Pelag. 2), Gregory was afterward sent to excuse the matter and appease the Emperor, for then the act of the clergy in choosing their Bishop was void, unless the Emperor approved the election. Gregory, that excused Pelagius, witnesseth the like of his own choice, and of sundry others."*

There is a remarkable case also narrated by Sozomen,† which may serve both to prove the authority exercised by Princes and the submission which was rendered on the part of the Church. When the see of Constantinople was vacant by the retirement of Gregory, Theodosius commanded the Bishops to present to him the names of such as they thought fit to succeed. Miletius, yielding to the importunity of another Bishop, added the name of Nectarius to the list. The Emperor read the names again and again, returning always to that of Nectarius, who was at this time not even baptized. The Bishops, who were greatly surprised, besought him to desist from his purpose, but without effect, for Nectarius was selected, and having been baptized, was declared Bishop. He proved to be a person of great wisdom and modera-

* Bilson's Perpet. Gov. of Christ's Ch. c. 15, p. 350.

† Lib. v. c. 8.

tion, so that many believed the Emperor to have been divinely directed in his choice. It is a remarkable instance of control exerted over the Church, when occasion seemed to require it; and even against the will of the chief ecclesiastical authority. It is important to add, that the ordination of Nectarius was held valid.* In reference to such cases, Bilson writes, “ Neither had the Roman Emperors this authority to dash elections, and appoint Bishops only at Rome and Constantinople; other places were in like subjection to them; and though their care were not so great for the smaller cities, which were innumerable, as for the principal sees, where themselves lived, and whither they often resorted; yet their right was all one in greater and lesser churches. If the chiefest Bishops might not be chosen without the Emperor’s consent, the meaner places had, neither by the Canons nor by the Scriptures, any more freedom from the Prince’s power than the greater. So that what superiority was then acknowledged and yielded by the greatest and chiefest Churches as due to Christian Emperors in the elections of Bishops, the same could by no means be denied them over other Churches, though the Princes themselves sometimes neglected, and sometimes refused to be troubled with the choice of so many thousand Bishops, as were under their territories.” †

* Theod. lib. v. c. 9.

† Perpetual Government of Christ’s Church, c. xv. p. 351.

The power of princes was proved as well by the deposition of Bishops, as by their appointment; and it was exercised on various occasions. We find Constantine threatening with expulsion from their sees the Bishops who should neglect to attend the Council of Tyre,* as Theodosius did expel the schismatical Bishops, who refused to communicate with the Patriarch of Antioch; and as in numberless cases Bishops were deposed by Emperors during the Arian troubles. So Justinian enacted, “*Si quis citra memoratam observationem Episcopus ordinetur, jubemus hunc omnibus modis episcopatu depelli.*”† And the Church submitted, as to an authority, which it was bound in duty to obey. Bp. Taylor has cited some remarkable instances of unhesitating obedience, even where the punishment seemed to be unjustly inflicted.‡

The transfer of power from the clergy and people to the Prince took place at a very early period. Its necessity was evident as soon as the circumstances of the Church became changed through its establishment; and henceforth, in whatever degree the right of voting in the election of Bishops attached to any class, it was exercised by the Emperor's favour. Bilson defends the change which occurred, on the ground both of lawfulness and benefit. “The people's right to elect their Bishop never depended on God's express commandment, but on the foundation

* Theodoret, l. i. c. 29.

† Nov. 123.

‡ Works, xiii. 499, 500.

and reason of human government, and was subject both to the canons of Councils and laws of Princes, and might be moderated and restrained by either of them, and by the people's consent, default, or abuse to be transferred, relinquished or forfeited; and without their wills by superior powers and public laws for just cause be abridged, altered, or abrogated; for the power and freedom of the people is not only submitted to the sword, which God hath authorized, but wholly closed in the sword; neither is anything lawful for the people, (setting aside the commandments of God, which are subject to no mortal man's will or power) which the laws of their country restrain or prohibit. Wherefore there can be no question, but the people may willingly forsake, and worthily lose the right which they had in the choice of their Bishops, and the Prince may be lawfully possessed of the people's interest. You must rather, if you will needs be so inquisitive, examine the causes which induced the law, whether they be just or no; and so shall you see whether this manner of election be a wise and good prevention of such corrupt factions and fearful tumults, as our desperate age would easily breed; or a rigorous encroachment on the people's right without cause or consent; which you cannot offer to think without evident wrong to the Prince and realm." "If judgement to discern between fit men and unfit be necessary, I hope the gravity and prudence of the Magistrate may worthily be preferred before the rashness and rudeness of the many, that

are often led rather with affection than with discretion, and are carried with many light respects and lewd means, as with faction and flattery, favour and fancy, corruption and bribery, and such like baits, from which Governors are, if not altogether free, yet far freer than the intemperate and unruly multitude. And so take what respect you will, either of discerning, assisting, or maintaining fit pastors, and you shall find the choice of Bishops lieth more safely in the Prince's than in the people's hands." "Rules of discipline be not like rules of doctrine. In Christian faith, whatsoever is once true, is always and everywhere true; but in matters of ecclesiastical government, that at some times and in some places might be received and allowed, which after and elsewhere was happily disliked and prohibited. If any father or council affirm, that by God's law the people have right to elect their Bishop, the Prince hath not: the assertion is so false, that no man need regard it. No proof can be made that the people have, by the word of God, an essential interest in the choice of their Pastors. If we speak of man's law; what some councils decreed, other councils upon just cause might change; and what some princes permitted, their successors, with as great reason, might recall or restrain, as the variety of times and places required."*

The appointment of Bishops by the body of Church members had clearly become incompatible with the

* Perp. Gov. of Christ's Church, ch. xv. pp. 348, 358, 368.

public peace and with the interests of religion. There was no divine law which forbade the concession of these powers to the Prince, while there were many reasons, not only of general benefit, but of equity, in regard to the interests of all, by which the Church was led to acquiesce willingly in the change. The opposition arose on the part of a rival Supremacy, against which the power of the Sovereign has been in every kingdom of Europe the safeguard and defence. It was not against ecclesiastical liberty that the authority of Princes was maintained, but against the aggressions of the Roman see, using, as on many other occasions, a fair pretence to cover a purpose of ambition and aggrandisement. Whatever arguments can be drawn from the records of the early Church against the claim of Sovereigns to nominate Bishops, may be urged with equal force against the pretensions of Rome. In the case of the former, there is the plea of necessity and justice, which has no application at all in regard to the latter.

SECTION 4.

THE history of the French Church, more perhaps than that of any other, may be used for the illustration of our own. Free elections of Bishops were claimed by the decrees of Councils, as that of Clermont, A.D. 550, and Rheims, A.D. 622. By the permission of kings, on whom, from the days of Clovis,

the Church was dependent, this freedom was allowed; and it was only by royal consent that it could be enjoyed. There is a constitution of Clotaire the Second, A. D. 615, in which we read, “*Episcopo decedente in loco ipsius qui a Metropolitano ordinari debet, a provincialibus, a clero et populo eligatur: et si persona condigna fuerit, per ordinationem principis ordinetur.*” *

Charlemagne, who increased the goods of the Church, and enlarged its privileges, enjoyed on the other hand the fullest amount of confidence, and received entire submission to his will in things ecclesiastical. He allowed the clergy and people to present to him the successor for every vacant see, whom he invested with the ring and pastoral staff, the consecration being performed by Bishops according to due order. In the words of his capitulary, “*Sacrorum Canonum non ignari, ut in Dei nomine sancta Ecclesia suo liberius potiretur honore, ad sensum ordini Ecclesiastico præbuimus, ut scilicet Episcopi per electionem cleri et populi secundum statuta canonum de propriâ diœcesi eligantur.*” †

Louis the Pious confirmed the allowance which had been made of elections according to primitive custom. Charles the Bald interfered but seldom with the choice of Bishops, and granted to certain churches special privileges in regard to the appoint-

* Baluz. Cap. tom. i. p. 21.

† Capitular. Car. Mag. anno 803.

ment of their Prelates. There was at this time a concession by different Sovereigns of powers which they might themselves have exercised.

Ordinarily Bishops were chosen by the clergy of the city and country, from parishes and monasteries, together with all the laity who were above a servile condition. The Royal prerogative was not however abandoned, though it was put in exercise only on rare occasions. Contests did however sometimes occur, as A. D. 853, when Charles appointed a Bishop of Chartres, who was rejected by the Council of Sens, on the ground of unfitness. The king however persisted in his right of appointment, and a second Council admitted the person whom he had chosen. Hincmar, who wrote at large on this subject, and took a conspicuous part in the ecclesiastical affairs of the time, assigns the choice of the Bishop to the people and clergy, the election to the Metropolitan and suffragans, the confirmation to the Prince. He was a strenuous advocate of popular rights, and certainly gave no support to the method afterwards invented, by which the power of elections was transferred to a portion of the clergy, and the lay members of the Church entirely excluded. It is evident that in his time at least there were no claimants of the power except the large class who possessed it in the earliest ages, and the sovereigns into whose hands it had fallen subsequently. Resistance was sometimes made, though seldom, in the name of the former, while the latter generally permitting the choice of

bishops to be exercised by the clergy and laity, retained the substantial power in their own hands, which they exercised without scruple when occasion seemed to require it. From the time of Charlemagne for 300 years the right was exercised really by the Crown. Gregory the First, when he found fault with bad episcopal appointments, which had been made by the king, did not complain of any usurpation upon church rights, but only that an improper use had been made of a power which was not, in itself, denied or called in question. Popular elections in the broad original sense were found to bring many inconveniences; and the choice fell naturally to the chief civil power, from which the Church had received so much, and on which in so many ways it was necessarily so dependent. It was the custom throughout what was then called the Latin world to carry the ring and staff of a deceased Bishop or Abbot to the King, that he might invest whom he pleased. "In the French monarchy," says Mr. Hallam, "a more extensive authority was assumed by the sovereigns. Though the practice was subject to some variation, it may be said generally, that the Merovingian kings, the line of Charlemagne, and the German emperors of the house of Saxony, conferred bishoprics, either by direct nomination, or as was more regular, by commendatory letters to the electors." *

The custom which prevailed so long was inter-

* Middle Ages, ii. p. 254.

rupted by Gregory the Seventh, who, in the Lateran Council A. D. 1080, pronounced excommunication against princes who should give investiture, and against Bishops and Abbots who should receive it at their hands. Pascal the Second expressed so strong an abhorrence of lay interposition, that he would have had all episcopal lands resigned rather than held as fiefs from princes. Calixtus the Second strictly forbade the clergy from rendering homage to any lay authority. It is not easy to reconcile these new principles with the acts of Adrian the First or Leo the Eighth. There is the denial of the right at one period, and the amplest concession of all that could be claimed at another. Long afterwards a concordat was made between Leo the Tenth and Francis the First, against which the Cardinal of Lorraine spoke in terms of the greatest indignation at the Council of Trent. It was intended to get rid of the pragmatic sanction previously in force, and which was supported by the University of Paris and the great body of the clergy. By this agreement episcopal elections were taken from the clergy who enjoyed them, and given to the king, whose nomination superseded both capitular elections and papal provisions. The See of Rome received indemnification by the security given for the payment of Annates. And in this way the *jus patronatus* was yielded for which so much bloodshed, and so many years of misery in previous conflicts had not been thought too high a price. Thus again in recent times, Pius the

Seventh, by concordat with Napoleon, deposed the Archbishops and Bishops of France, that their sees might be filled with prelates nominated by the civil power.

No evidence could prove more plainly the shifting and uncertain policy of the Roman Church. But changes as great have taken place in the manner of electing Popes themselves. Some of the Carlovigian princes nominated, others confirmed the Bishops of Rome. During the disorders which attended the reigns of the last of that race, the Popedom was conferred by the commonalty of the City. From the time of Leo the Eighth, the Emperors recovered the prerogative of Charlemagne. Then, by Nicholas the Second, the right of election was conferred on the conclave of Cardinals, at the suggestion of Hildebrand who was then Archdeacon of Rome. The last of these methods has not the shadow of prescriptive right, and is purely an invention of the eleventh century. It is hard to reconcile these changes in the very method of appointment to the See of Rome with the claim of universal patronage, *ex plenitudine potestatis*, made by its occupants; an usurpation indeed only to be equalled by the doctrine on which it depends for support, that the Pope is the fountain of all Episcopacy. These considerations may assist us to understand the question of right in the appointment to Bishoprics among ourselves; to whom it belonged; and by whom it was invaded.

SECTION 5.

IN Anglo Saxon times, the power of appointing Bishops was exercised ordinarily by the kings, with the advice of their nobles and chief clergy. Sometimes the Sovereign appears to have employed his prerogative without reference to any counsellors; some bishops were selected by the Metropolitan, and sometimes the Archbishop nominated his successor, as was the case with Augustine. Theodore was, as is well known, appointed by Pope Vitalian, but this was an instance of usurped authority, and was not used as a precedent. "In England before the Conquest" says Mr. Hallam, "Bishops were appointed in the Wittenagemot; and even in the reign of William it is said that Lanfranc was raised to the See of Canterbury by consent of Parliament."* In the words of Ingulphus, quoted by Blackstone "Omnes dignitates tam episcoporum, quam abbatum per anulum et baculum regis curia pro suâ complacentiâ conferebat."† "It was usual at those seasons for the King to hear and determine controversies between his great men, to dispense his munificence to them, and to bestow vacant Bishoprics. And hence it is that the writer of S. Dubricius's life, feigns of King Arthur; that the first three days of Whitsuntide were spent in paying their attendance on the King; then

* Middle Ages, ii. 254.

† B. i. c. 11.

on the fourth day they that paid their duty to the King for the obtaining of honours, had possessions, cities, and castles bestowed on them : and the clergy who wanted Bishops were provided with them.”* So again “ An. 994, (in the Council held) at Amesbury on Easter-day, Ælfric Bishop of Wilton was chosen Archbishop of Canterbury by King Ethelred, omnibusque ejus proceribus, says the Saxon Chronicle. In perusing which Chronicle, I observed that about those times, when the Author speaks of the King’s doing any thing, he very frequently joins him with his proceres, because it was done in the time of a great Council.”† “ A. D. 1070 Lanfranc was chosen Archbishop of Canterbury by the seniors of that Church, together with the Bishops and Princes, the clergy and people of England in curia regis, in assumptione B. Mariæ, says Gervasius, a monk of Canterbury, who lived in the reign of King Henry the Second. So Ordericus Vitalis tells us, that he was made Archbishop Regis et omnium optimatum ejus benevolâ electione. In the account of his promotion, which is to be seen at the end of Taylor’s Gavelkind, it is said, that the king committed the church of Canterbury to him, consensu et auxilio omnium Baronum suorum, omniumque Episcoporum et Abbatum, totiusque populi Angliæ. It being the custom for the King to nominate Bishops in those solemn times, when all his great men were about him to advise

* Hody Hist. of Conv. p. 59.

† Hody, p. 79,

him ; it is therefore said, that they had a hand in the enterprise.”*

Rufus usually appointed his chaplains to bishoprics, as it appears was the custom with Edward the Confessor. The case of Anselm is in every respect remarkable. It furnishes an instance of the Royal Supremacy in Episcopal nomination exercised by a powerful Sovereign, as well as of the foreign claim urged in vain during his life, but successfully maintained in consequence of the difficult circumstances in which his successor was involved. “ Being entreated to nominate to the See of Canterbury, he agreed to the request. As for the person, the Court did not think fit to suggest anything, or lead the King in his choice ; but when he had pitched upon Anselm for the man, it appeared that they were all extremely satisfied with the nomination.”† When Anselm afterwards refused to render homage to the King, he was so far from contending for the liberty of the Anglican Church that he acted throughout under Roman influence, and was in opposition to the Bishops not less than to the lay Nobles of his own country. They supported the Royal Supremacy as the chief barrier against foreign intrusion. After the death of Anselm the See of Canterbury had been kept vacant for five years, when Archbishop Ralph was appointed in a Council held at Windsor A. D. 1114.‡ So again

* Hody, p. 147.

† Collier, i. p. 266.

‡ Hody, p. 195.

his successor William Corbel was chosen in a Council held at Gloucester A. D. 1125.* Becket appears to have been chosen Archbishop by the authority of Henry the Second, exercised under the usual forms “ the King who was in Normandy, dispatched Chancellor Becket into England under colour of managing some business relating to the state ; but with a design to prefer him to the Archbishopric.” † In appearance the election of Archbishops had at this time fallen into the hands of the provincial Bishops or of the Conventual body, for it is in dispute which possessed the right ; but in reality the power belonged to the Crown. Thus we read of an appointment in the time of Richard the First, that “ The King having a good opinion of Hubert, Bishop of Salisbury, who attended him in the holy war, was willing to promote him to the See of Canterbury ; to this purpose he wrote to the Convent of Christ Church to proceed to an election, but without pointing much upon the person, that he might not seem to press upon their privileges, or overrule the freedom of their votes. However, in a letter to the Queen Mother, he sent private instructions to the Bishops of the province, to go to Canterbury, and make an interest for Herbert, and if they perceived they could not carry their point, to stop the election till the King’s return.” ‡

* Hody, p. 202.

† Collier, i. p. 448.

‡ Collier, i. p. 405.

SECTION 6.

IN the early part of the twelfth century the right of choosing Bishops, which was gained from Sovereigns, became vested in chapters, who were either canons of Cathedrals or members of conventual bodies. In England, by the opportunity of some feeble and unpopular reigns, the Pope succeeded in establishing the same system, and for a long series of years we find the capitular form of election maintained. It was no concession to the Church, as it would have been if the privilege had been restored to the whole body of the faithful; but it was a very important step towards the object which had been long followed by the see of Rome. The right of electing Bishops and Abbots was secured in the reign of John to the chapters and convents, and from this period the power of the Pope over the great English sees became paramount. His confirmation was held necessary; and the decision of all controverted elections was placed in his hands by appeal. Sometimes long delay occurred, as in the case of the Archbishopric of York under Stephen, which was in this manner kept vacant for five years. The rules by which elections were governed were very intricate, and at the same time the intrigues of the electors, and the difficulties raised on the trial of questions before the Metropolitan tended to furnish opportunity for papal interference. Some form was so often found wanting,

some rule violated, some unfitness real or pretended in the person chosen, that elections were commonly disallowed on the ground of alleged canonical defect, and the patronage fell to the Pope. Many elections gave rise to miserable contests between the Sovereign and the See of Rome. Sometimes the chapter or the monks concealed the death of a Bishop or Abbot, until the election of a successor had been carried secretly, and with indecent haste.

The claim of the chapters has been lately urged as if it had some foundation of right. This is sufficiently disproved by the history of its origin, which was a mere encroachment on the liberty of the Church, as well as on the prerogative of the Crown. But the real nature and obligation of the pretended liberty of choice granted to the capitular bodies, will best appear by the examination of some cases in which it was exercised.

The circumstances under which Stephen Langton was appointed successor to Hubert in the see of Canterbury may serve to shew the use which was made of these elections by the policy of the Roman Court. Before the burial of the late Archbishop some of the monks chose one of their own number to fill his place. This election was set aside at Canterbury, as having been that of only a portion of the body, and on the King's recommendation, John de Grey, Bishop of Norwich, was chosen. The conclusion may be told in the words of Collier, "The Pope, after he had declared both the elections void,

recommended Stephen Langton, a cardinal priest, to the proxies of both parties. He pressed his choice upon them from the learning, capacity and conduct of Langton ; and that the promotion of a person so well qualified would be a public service to the kingdom. To this the monks answered, that the election of an Archbishop was not within their commission, and that they durst not undertake it without the King's consent, and a farther authority from the convent. The Pope replied, that they interpreted their power in too modest a sense ; that they were under no limitations from their principals ; and that when elections were made at the Apostolic see, it was not customary to wait for the Prince's consent. He charged them therefore upon their obedience and under the penalty of being excommunicated, to choose Langton for their Archbishop. These menaces frightened the monks into a compliance, none of them, excepting one, Elias de Branfield, having the courage to stand out. And thus Cardinal Langton was elected at Viterbo, upon the sixteenth of May, and consecrated by the Pope."* Resistance to the Pope was of no effect ; the wishes of the provincial electors and of the King were disregarded, and by interdict and excommunication, compliance was at last enforced. There could not have been a more significant explanation of the true meaning of capitular election ; and we may trace the influence of it in the future submission rendered by the chapters.

* Collier, i. p. 413.

On the death of Langton, in 1229, the Monks of Canterbury chose an unfit person, whose election was disallowed by the Pope, and, as a penalty on the convent, he reserved the appointment of an Archbishop to himself. By the offer of tenths made by the English ambassador for the prosecution of the war with the Emperor, he was persuaded to nominate Richard, Chancellor of Lincoln, a person acceptable to the nation.

On his death, in 1231, the monks made three elections of a successor, each of which the Pope annulled on a different pretence, and then substituted Edmund, who was consecrated to the see.

In 1241, "The monks of Canterbury, elected Boniface, of the house of Savoy, the Queen's uncle, for their archbishop. He was, besides the nobleness of birth, a very graceful person, and a fine gentleman. But as for learning, and other qualifications expected in his character, he was thought to come short of the advantage of his predecessors. The King, therefore, to make the election pass at Rome, had an instrument drawn up, and addressed to the Pope, in commendation of his uncle Boniface: He prevailed with the Bishops and Abbots to put their seals to it, though many of them are said to be frightened into this compliance. However, several of the prelates were men of resolution, and chose rather to stand the King's displeasure than sign the panegyric. And some of the Monks of Canterbury were so dissatisfied with their own votes, that they quitted their con-

vent, and bound themselves to a perpetual penance in the Carthusian order.”*

Boniface died in 1270, when “the Monks of Christ’s Church, upon the death of their Archbishop, chose William Chillenden, their prior, who renounced the election, before Pope Gregory X.

Upon this vacancy, Robert Kilwarby was nominated by the Pope, 1272, and consecrated at Canterbury, the first Sunday in Lent the year after.”†

Archbishop Kilwarby resigned his see, having been appointed Cardinal. “Upon the vacancy, the Monks of Canterbury chose Robert Burnell, Bishop of Bath; who was in Gascony upon the King’s business. Though this election was unanimously carried, the Pope, by the plenitude of his power, thought fit to set it aside, and gave the see of Canterbury to John de Peckham, a Franciscan of eminent learning. He was consecrated at Rome on Mid-lent Sunday, and came into England not long after.”‡

His successor, Winchelsey, after a vacancy of two years, having been chosen by the Convent, was approved by the King, and confirmed by the Pope, to whom he was so acceptable that he might have remained at Rome with the rank of Cardinal, if he would have resigned his see.

On the death of Winchelsey, “the see of Canterbury, after a vacancy of nine months, was filled with Walter Reynolds, who was translated thither

* Collier, i. 446.

† Ibid. p. 477.

‡ Ibid. p. 479.

from Worcester. And here, the monks' election was over-ruled by the Pope, at the King's instance : their election, I say, was over-ruled ; for the Convent had unanimously concurred in the choice of Thomas Cobham, Dean of Salisbury, a person of eminent learning, and so remarkably regular and devout, that he was commonly called the good clergyman."*

The same interference continued unchecked, and appears even to have increased in the fifteenth century, for we read that " after the breaking up of the Council of Constance, Pope Martin began to strain his Supremacy upon the English Church, and carry it to unprecedented oppressions. For this purpose, he engrossed the disposal of all Bishoprics by way of provision, made void the elections of the chapters, and in two years' time promoted thirteen Bishops in the province of Canterbury."†

SECTION 7.

BUT instances enough have been adduced to prove that the right assigned to chapters was no more than nominal, and that the pretence of putting privilege into their hands had no other design than to increase the real power of the Pope. When the appointment to Bishoprics was finally secured to the Crown, it was

* Collier, i. p. 508.

† Ibid. p. 647.

but the resumption of what had been formerly yielded. A great abuse had been the consequence, and it concerned the liberty of the Church as much as the Supremacy of the Prince that it should be corrected. This is no more than is asserted by the Statute of Carlisle.* The same original right is maintained in the letter of Edward III. to Benedict XII. in which he affirmed "that his progenitors having endowed the Cathedrals, had formerly nominated to them upon a vacancy by virtue of their prerogative. That afterwards, at the petition of the clergy, and out of regard to the then Pope, the King of England granted the chapters the liberty of choosing their Bishop, with this proviso, that upon the death, or translation of any Bishop, the chapter should be obliged to certify the King, and desire his leave to proceed to a new choice, and that after the election was over, they were to present the elect to the King for his approbation: that before this was done, the new Bishop was not to enter upon any part of his function."† The Statute of Provisors‡ is to the same effect. Bishop Bilson referring to this act affirms, that "It is evident, the Kings of England had right to confer bishoprics and other dignities before free elections should be made, they did never dispossess themselves of these two prerogatives; first, that the King's license must be asked to choose; and next, the King's consent to make the election

* 35 Ed. I. c. 4. † Collier, i. p. 533. ‡ 25 Ed. III. c. 6.

good ; yea, Henry I. the Conqueror's son, sent the Pope word in great earnest, that he would not lose the investiture of his churches, not for the loss of his kingdom (Matt. Par. in Hen. I. an. 1103,) and so neither clergy nor people had ever any right in this realm to choose their Bishops since the kings of this land began to endow them with lands and livings for the ease of their people, and benefit of their Church, but by the King's grant and with the King's leave and consent. For God's law prescribing no form of elections, it is most clear by the laws of this realm, that princes, being the first founders of churches and endowers of bishoprics, have had, and ought to have, the custody of the same in the vacancy (Magna Charta, ca. 5,) and the presentments and collations of those prelacies, as lords and advowees of all the lands and possessions that belong either to cathedral churches or bishops."*

The question of right lies between the Prince on one side, and the whole body of clergy and laity on the other. The claim of the latter was formerly represented in parliament, and hence Bishops are said to have been chosen by the King ' with all the clergy and people,' when they were nominated in assemblies which contained representatives of the whole nation. It has not been proposed to restore this method, we need not therefore dwell on its obvious objections. But if the power which at present resides in the

* Bilson's Perpet. Gov. of Christ's Church, chap. 15, p. 363.

Crown were transferred to the clergy, it would be an unquestionable violation of the rights of the lay members of the Church, and the establishment of an injustice, by vesting in a class what belonged anciently to all. And if the right of choosing a Bishop were conferred on the whole ecclesiastical body of the diocese in which the vacancy occurred, still only one class of the original electors would be restored, and the claim of the laity, which is just as well founded, would be overlooked ; but if the Chapters, that is an inconsiderable portion of the clergy, alone received this franchise, it would be by the infliction of a still greater wrong. The proposal is very unlikely to be made with any weight of authority, because they who know our history are aware that no claims can well have a slenderer foundation. As the law has stood for 300 years, the right of appointment to English episcopal Sees is vested in the Crown absolutely, although the form of *congé d' élire* is maintained. The chapters are bound to make the election within twelve days from the time of receiving the letters missive, and if they refuse to elect the person recommended, they incur the penalty of *præmunire*,* and the appointment takes place without their intervention. The complaint of the chapters is not unreasonable, that they are compelled to adopt a solemn form of proceeding, the reality and meaning of which are neutralized by the previous recommendation, from

* Blackstone. i. 2.

which they are not at liberty to depart. The act which they are compelled to perform is as purely ministerial as that of a Bishop who institutes a clerk presented to a benefice; but to maintain the appearance of deliberate choice in an appointment, which is very properly independent of their judgment, is an evil from which most religious-minded persons would be glad to see the Church relieved. But the remedy must be sought, not in making the form a reality, but in omitting the use of it altogether. The fault lies not in refusing to chapters the right of election, but in compelling them to preserve an appearance of possessing it. And no good end seems to be answered by that which is clearly a ground of offence to some. The form of election by chapters was abolished by the Act 1 Ed. VI. c. 2. in which it is stated that “the said elections be in very deed no elections, but only by a writ of Congé d’élire, have colours, shadows or pretences of elections, serving nevertheless to no purpose, and seeming also derogatory and prejudicial to the King’s Prerogative Royal, to whom only appertaineth the collation and gift of all Archbishoprics and Bishoprics, and suffragan Bishops within his Highness’ said realms of England and Ireland, Wales, and other his dominions and marches, &c.”* This statute was repealed by 1 Mary c. 2., but Irish Sees are still donative, and Bishops are appointed by letters patent. There seems no adequate reason why

* Stat. at large, v. 245.

the same process might not be used in England, by which some scruples would be removed, and at least one plea for agitation be taken away.

We have seen that originally elections were in the hands of the whole body of clergy and laity, but that the exercise of the right in its full extent became at an early period impracticable. It could not now be restored. The boldest follower of antiquity would not propose the revival of a system, which would turn all the violence and bitterness of controversy into one channel, and bring to a point all the angry passions which are afloat. No defences would suffice for the protection of what is venerable and holy, if the multitude of those who, according to any test, would have the privilege of church membership, were to be invested with so great a power. No one is hardy enough to suggest a recurrence to the popular form of election in the breadth of its primitive use ; but there is no alternative, which would command acquiescence, except the maintenance of the present system. There are two great parties whose ancient right is equally good. Neither would yield by any definitive act, if that were possible ; but both may well acquiesce in the exercise of their common right by the authority which is supreme over both.

Greater importance in this question than seems to be reasonable, has been assigned to the change in the English constitution. If the government is less autocratical than it once was, and there has been a greater infusion of the popular element, in proportion to this

change there is more weight given to the judgment of those who had the earliest claim of all. The clergy and laity, who were together the original electors of Bishops, have by representation, an influence in all public acts. The minister in whose hands the executive government is vested, has not a separate and independent power; but he is strong so far only as his acts express the mind of the people; and a control is exercised over his whole line of policy, which includes in its effect the responsible duty now in question, not indeed reaching every individual case, but on the whole allowing the judgment of all classes, who have a right to be heard, a more equal amount of influence than could be secured in any other practicable way.

In the other governments of Europe, the exercise of the Royal Supremacy in respect to episcopal appointments is preserved as much as in our own. In Austria, Bishops are appointed by the Emperor, and confirmed by the Pope. In Hungary it is the same, with the omission of the papal confirmation. In Italy the Emperor nominates the Bishops of Pavia, Cremona, Lodi, and Como, and the Archbishop of Milan. The Venetian Senate appoints the Patriarchs of Venice and Aquileia. All Bishops in Sicily are chosen by the king, and it is the same in Sardinia, Piedmont, and Savoy. In France, Spain, and Portugal, it is the civil government of each by whom the appointments are made. And in these countries all rescripts of the Pope are submitted to the sanction of

the supreme power. The prerogative of Sovereigns which prevails elsewhere is not likely to be abandoned among ourselves. State reasons there may be for its maintenance, but not less are there the strongest ecclesiastical arguments; and we must be on our guard against letting our jealousy of the former, make us insensible to the force of the latter. No system by which the chief pastors of the Church have been chosen, can claim the weight of a divine and immutable law; and the one method more ancient than our own, is not anywhere in use, and its revival is hopeless. But no system can be trusted for producing the results which Christian hearts so earnestly desire. They cannot be ensured by the best, nor altogether prevented by the worst. It was the same constitution which produced Cyprian and Athanasius on the one side, and Eutyches and Paul of Samosata on the other. If Ambrose defended the faith with eminent success, Auxentius his predecessor at Milan had equally denied it; and they were both chosen by the people. In the impressive words of Thomasin, "*Quanto fuit Ecclesiæ et ornamēto electio Chrysostomi et præsidio, tanto fuit exitio et dedecori Nestorii nominatio, tametsi et ipse ex eādē accersitus sit civitate et Ecclesiâ Antiochenâ, ubi presbyteri munere et ipse fungebatur. Diserte Socrates testatum facit, Imperatorem molestissime ferentem tantum factionum et ambitionis exarsisse in Ecclesiâ Constantinopolitanâ post mortem Sisinii, clericos omnes ejus Ecclesiæ ejus adipiscendæ spe dejecisse, et Antiochiâ*

Nestorium accivisse. Visum est Imperatori propter homines inanium rerum appetentes, neminem ex illâ Ecclesiâ ad Episcopatum illum eligere, sed advenam accersere." *

For great and permanent benefit, we must look beyond what is incidental and outward. If the Church is to have Bishops such as these difficult days require, it must be by means which tell upon the ranks out of which they are chosen. In proportion as the clergy are men of faith and prayer, of piety and self denial, at once meek and stedfast, bold for truth, and winning the world to Christ, those of their number who are called from time to time to offices of government and charge, will be such as to bring a blessing on the age. It is a result of unspeakable importance; and if other things combine for its promotion, it will not be hindered by the ancient and rightful Supremacy of our Princes.

* Vet. et nov. dis. p. ii. lib. i. c. 6.

CHAPTER IV.

SECTION 1.

THE subjection of Synods to the authority of the Crown is commonly described as a bondage in which the civil power holds the ecclesiastical; and the continued refusal of permission to assemble, is cited as a flagrant instance in which the rights of the Church are denied. Of these allegations, the one respects a prerogative, the other the way in which it is exercised, which is a separate consideration.

In regard to the former, nothing is easier than to shew that the claim of control over councils is one of the most ancient made by Christian Sovereigns, and that it was yielded with entire willingness by the Church. In the words of Archbishop Wake, “ If we look up to the history of the first and most famous Councils of the Church, we shall accordingly find, that they were all convened by the Imperial Authority. Thus Constantine the Great not only summoned, but sat himself in that of Nice. Theodosius the Great both assembled the second general Council of Constantinople, and, at the desire of the Fathers, confirmed the acts of it. The Council of Ephesus, the next General Council, was not only called by the Emperors Theodosius the younger and Valentinian, but, that all things might be done decently and orderly in it, they sent Candidian as their Commis-

sioner, to preside over the Bishops, and to direct their proceedings, according to the instructions which they had given him for that purpose. And when the heresy of Eutyches gave a new occasion to the same Emperors to assemble another Synod; they, in like manner, appointed it to meet at the same place; and commanded Dioscorus, Patriarch of Alexandria, to preside in it.”* There is very ample and irresistible evidence of the power over Synods which for centuries was lodged in the hands of Christian Sovereigns. The cases which we find are not isolated and occasional, but occurring in a long succession, from one age to another, in various countries, and with so much regularity as to give the assurance of a rule which was universally admitted. It is no more than the truth which is asserted in the 20th Article of our Church, that “General Councils may not be gathered together without the commandment and will of princes.” And we must remember that the smaller Synods were assembled periodically in obedience to the directions given in the larger. It was on the ground of wanting this sanction that St. Jerome denied the authority of a Council. *Quis Imperator jussu hanc Synodum congregari?*† The case might seem very urgent, and yet it was not even proposed to dispense with the consent of the Prince as a necessary preliminary. The orthodox Bishops desired Constantius to summon a free Council for deciding the case of Athanasius, and when he refused, they sub-

* Auth. of Ch. princes, p. 14.

† Apol. ad Ruff. lib. 2.

mitted without either questioning his right, or attempting to use any independent power of their own. Nor did they venture to convene a Synod afterwards, to remedy the injury which the faith had received under the Arian Emperor, until they had the permission of Valentinian.* But the Royal Prerogative extended far beyond the mere right of summons: It included the management of the Council when assembled, the prescribing of subjects and ordering the method of debate. A synodical epistle was usually sent which conveyed the imperial directions, and sometimes a Commissioner was appointed to preside and to act as moderator.

And when decrees had been passed in ecclesiastical assemblies, summoned and regulated in this way, they were subject to the Emperor's approval to be "ratified by his authority," in the words of Eusebius,† or altered or annulled as he should see fit. Thus Theodosius confirmed the decrees of Constantinople, and not by any unacknowledged right of interference, but at the desire of those who were present. "Certainly," says Jewel, "the Bishops in the Council of Constantinople wrote thus in humble wise unto the same Emperor Theodosius: We beseech your Majesty, that as ye have honoured the Church by your letters, wherewith ye have called us together, so it may please you to confirm the final conclusion of our decrees with your sentence and with your seal."‡

* Sozom. vi. c. 7. † Vit. Const. iii. 23. ‡ Def. of Apol. p. 688.

And again, "The lay prince in Council hath had authority, not only to consent and agree unto others, but also to define and determine, and that in cases of religion, as by many evident examples it may appear. Evagrius saith, as it is before alleged, they that were of the Senate, or the Lords of the Council, determined these things. Sozomen saith: The Emperor Constantine commanded that ten Bishops of the East, and ten of the West, chosen by the Council, should repair to his Court, and open unto him the decrees of the Council, that his Majesty might consider whether they were agreed according to the Scriptures; and that he might further, (not only consent, or agree, but also) determine, and conclude, what were best to be done."* This power of confirming synodical decrees, by which they obtained the force of law, is expressly asserted by Justinian. "All these things at diverse times following, our above named predecessors, of pious memory, corroborated and confirmed by their laws what each Council had determined, and expelled those heretics who attempted to resist the definitions of the aforesaid four Councils, and disturb the Churches."† The very terms which are used in the imperial rescripts, *definimus*, *mandamus*, *jubemus*, imply the same assertion of control which, as we have seen, was very far indeed from being denied by the Church. It is certain that the confirmation of canons by Elizabeth and James, or those of

* p. 686. † Justin. in Conc. v. coll. i. quoted by Barrow.

the French Church in 1682, by Louis the Fourteenth, is amply vindicated by these early precedents.

The place of meeting was equally subject to the Emperor's appointment, and his authority was sufficient to prevail against the wishes of the most eminent Bishops, however strongly expressed. "When Eutyches began to corrupt the Christian faith, and it was thought necessary that a General Council should be called, to put a stop to his errors; Leo, Bishop of Rome, petitioned Theodosius, with all imaginable earnestness, that he would consent to let a Synod be assembled in Italy for the judging of it. This the Emperor utterly refused to do, and ordered the Council to be held at Ephesus: and the good Bishop was so far from complaining of it, that he submitted to his summons, and thanked him that he would, at least, vouchsafe to have it there. And when, by the practices of Dioscorus, that Council answered not what was expected from it, the same Leo, not only supplicated the Emperor again, with tears and groans, in the name of all the Bishops of the West, that he would command another Council to be held somewhere in the West, to determine that affair; but moreover engaged Valentinian and Eudoxia his wife, with many others of the greatest note, to join in the same request with him. But Theodosius not only now refused him as to the place, but denied him as to the calling of any other Synod;

nor would he be persuaded to suffer any other to meet as long as he lived." *

In the time of Charlemagne there was the same submission to the Royal Supremacy. "They called them, as their Council, to advise them in ecclesiastical matters; and their Synods looked upon themselves no otherwise. They submitted their decrees to their examination, and pretended not to expect that they should confirm them, any farther than they appeared to them to deserve it. Thus the Fathers, in the third Council of Tours, declare, that they met to assist the Emperor by their remarks of what they judged to need some amendment. And having drawn up their opinions in fifty one Canons, they thus finally conclude all: These things we have thus debated in our convention: but how it will please our most pious prince hereafter to act, with relation thereunto; we, his faithful servants, are ready, with a willing mind to submit to his pleasure." † The tone used by the Council of Arles in the following year is in all respects similar. De Marca speaking of Councils held in the Gallican Church some centuries later thus describes them: "*In illis Conciliis, nihil regiæ auctoritati adversum reperitur. Contrà in iis deprehenditur integra executio jurium regionum quæ in initio hujus libri adnotata sunt, ad Regem nimirum pertinere jus convocandi Ecclesiam Gallicanam, proponendi materiam quam in conventu agitari voluerit,*

* Wake, p. 33.

† Ibid. p. 92.

examinandi res in eo decretas, easque, si visum fuerit expedire, approbandi, earumque executionem jubendi.”* There is extant an edict of Reccaredus confirming the decrees of an early Council of Toledo, “Cum sensus maturitate et intelligentiæ gravitate constant esse digesta, nostra proinde auctoritas id omnibus hominibus ad regnum nostrum pertinentibus jubet, ut si qua definita sunt in hoc Sancto Consilio habita in Urbe Toletana, anno Regni nostri feliciter quarto nulli contemnere liceat, nullus præterire præsumat, capitula enim, quæ nostris sensibus placita, et disciplinæ congrua, a præsentī conscripta sunt Synodo, in omni auctoritate, sive Clericorum, sive Laicorum, sive quorumcunque omnium observentur et maneant.”† “It is plain that the Spanish Councils which did treat about, and determine both matters of faith, and matters of discipline, were all assembled by the King’s command; and that all the Bishops in those numerous Councils, did not only allow of that Royal Ecclesiastical Supremacy, but did rejoice in it, and thank God for it.”‡ Elsewhere it was the same, and in the words of Archbishop Wake, “Let this be the result of our second enquiry; viz. That the Christian prince has a right to prescribe to his Synods the work they are to go upon; and to restrain them from meddling with such things as do not belong to them. That he may direct, not

* Lib. vi. c. 34. s. 2.

† Quoted by Dr. Geddes on the use of images, p. 50.

‡ p. 46.

only the subject, but the order and method, of their debates. That he may, if he please, sit and deliberate, with his clergy in them: and interpose his judgment, not only in matters of discipline, but in matters of faith too. That it is not only his right, but his duty to examine what they have concluded upon: and either to confirm, or rescind their decisions, according as he shall remain satisfied or not; of the truth, the justice, and the expediency of them.”* No right could be better established than that of princes to convene and control Synods, to confirm, vary and annul their decrees. It began with the days of Constantine, and was never called in question till Popes drew to themselves the authority to which in earlier ages they laid no claim. They advanced in their encroachments gradually, first by advising the clergy to assemble when the Sovereign had issued his command, then by sending the summons and leaving the enforcement to the civil power, and at last assuming to call Synods, to preside by their legates, and to prescribe the canons to which they required assent. Leo the Ninth was the first who claimed the power of convening Councils; in the words of his bull “quod convocatio Conciliorum generalium, et depositio episcoporum solius est Romani Pontificis.” In England the authority of Kings in respect to legislation on ecclesiastical subjects was very great. Laws of a purely spiritual character were published

* p. 75.

under their names, and they are still known as those of Ethelbald, and Alfred, of Edgar, Edward the Confessor and others. But after the conquest the liberty of the English Church and the prerogative of the Sovereign were invaded not less in respect to Councils than other departments of ecclesiastical government and jurisdiction. In 1125, and this is the first instance on record, a legate from Pope Honorius presided against the will of the Archbishop, who to prevent this diminution of his authority obtained the same office for himself, and the following year summoned a Council under his new character of papal legate. The step was very injurious to the freedom of the Church. The office which he solicited was willingly granted in order that the permission to hold councils of the English Church might more manifestly appear to be derived from the See of Rome. From the twelfth century until the Reformation the power was increased by the subtle use of all favourable opportunities ; and Councils continued to be held independently of the Royal Authority. It has often been alleged that, by the act of submission, the clergy relinquished a right which they previously enjoyed of meeting in council, whenever the affairs of the Church might require, and without the necessity for any permission. Metropolitans possessed the power of calling Synods and of making canons ; but so far was this from being a proof of independence that it was but another instance of subjection to a foreign Prelate. The Archbishop had no authority

in this, or other departments of his office, but that which he derived from Rome, and of which the pall was the token, as well as the title of legate which he ordinarily bore. In this respect therefore, as well as in others which have been noticed, the Royal Supremacy resumed its ancient right, and put an end to an usurpation which contradicted both ancient practice and the principles of Church government.

SECTION 2.

THE English Convocation differs essentially from all other Church Synods. The design of its first institution was purely secular, and all besides is incidental and superadded. It was convened not for questions of doctrine or discipline, but for taxation; not for making canons, but for granting subsidies, and for regulating the contributions which were claimed by the national treasury. When it came to discharge spiritual functions it was applied to an object not contemplated in its original formation.

Ecclesiastical property was for many ages almost entirely free from tax. Even when the tenure by which the Bishops held their possessions was changed, and they became liable to a new charge, and were brought under the obligation of bearing part in the state burdens, the inferior clergy continued for the most part exempt. Occasional aids were demanded, but only at intervals, and with great irregularity.

The duty of ordinary contribution was not yet admitted; although from time to time the temporalities of the Church were seized, and important preferments were kept vacant for years, while the revenues were enjoyed by the Crown. In 1188, a general tax was imposed for defraying the expense of a crusade, and the clergy were included with the laity, but the object was popular, and no opposition was offered. So, again, they were called on to contribute their portion towards the ransom of Richard the First, which, for the same reason, was raised without difficulty. But in 1203 and in 1205, we find that the clergy either refused, or evaded the demand for a subsidy made by the King. Bishops at this time, either as barons, or by writ of summons, had a place in Parliament, but we find the body of the clergy in the reign of Henry the Third complaining of being subjected to taxation without their consent. Deans, abbots, and priors brought letters of procuration; but there was properly speaking no system of representation. Edward the First, in the beginning of his reign, followed the custom of his predecessors in obtaining help from the clergy. Contributions were hitherto precarious, and seldom demanded, except under the stress of some great difficulty, when the Pope often interposed his authority, by which the King accomplished his purpose, though at the disadvantage of giving influence to a foreign power. Sometimes the Bishops gave their assistance in obtaining these subsidies when an emergency arose,

letters of security being granted in return, that what had been done should not be drawn into precedent. In the meetings which were called for the purpose of making such grants, the clergy began to be represented by the archdeacons, and sometimes by proctors of their own choice, in whose hands, or in those of the Bishops, their resolutions were placed.

But about the time that Parliament assumed its present form, a considerable change took place in respect to the temporalities of the Church, which were now made subject to imposts in common with other property; but because they had been devoted to sacred uses, it was held that the clergy alone were competent to deal with them, from which consideration their right of taxing themselves originated. Representatives of spiritual persons, as well as lay, were now appointed to be sent to Parliament, one for each chapter, and two for each diocese, although the number was not at first enjoined with any strictness, thus, A. D. 1296, the diocesan clergy were summoned to appear by one proctor,* and A. D. 1311, either by one or two, as they might prefer.† The form of summons, which was several times varied, and which became what it is at present in the reign of Richard the Second, contained the *præmunientes* clause, by which attendance was compelled, but this was sometimes omitted until the middle of the fourteenth century, when the attendance of the clergy was enforced, and

* Hody, on Conv. part iii. p. 151.

† p. 167.

the numbers fixed. They came to Parliament with reluctance, because they were not reconciled to the payment of taxes, from which they had been hitherto in a great measure free. They contributed, though unwillingly, in 1295, but the following year they refused, pleading, in part, a bull which forbade them to grant any subsidy *Papâ inconsulto*, and, in part, the insufficiency of their numbers for deciding so considerable a matter. It was on this occasion that their property was seized by the King, and sentence of outlawry pronounced, by which they were reduced to submission.

It was to escape the transaction of their business in the presence of the laity, which seemed unfavourable to their interest, that the clergy desired to meet as a separate body. To vote money was the purpose for which they were summoned, and provided that the requisite amount was furnished, the manner and the place of their meeting were little regarded. It is remarkable that, in the reign of Edward the Sixth, the clergy petitioned the Archbishops and Bishops to intercede with the King and the Protector, that they might be restored to their right of parliamentary attendance. They renewed their petition towards the close of Elizabeth's reign, and again in that of James the First.

The meeting of Convocation was generally held while Parliament was sitting, because the grants came, after some time, to be ratified as acts of the legislature. The ecclesiastical and the secular assem-

blies, although held separately, had both a common object in supplying the necessities of the state.

The ancient mode of summons is still preserved, and consists of the diocesan writ addressed to the Bishops, and of the provincial writ addressed to the Archbishops. This two-fold form was originally adopted, because the clergy who were unwilling to come to Parliament or to Convocation at all for the purpose of contributing to the public revenue, often refused, unless they were called by the mandate of the Archbishop. He was therefore directed to cite them, in order that their attendance might in this way be secured.

The business for which Convocation held its customary sessions was thus originally secular. There were other assemblies of the clergy for ecclesiastical objects, held at distinct times and under different circumstances; the diocesan synods, in which the Bishop presided over his clergy; and the provincial, in which the suffragan Bishops were convened by the Metropolitan. In the one, canons and constitutions were published under the name and authority of the Archbishop; and in the other they were communicated by each Bishop to the clergy of the diocese, together with such farther direction or charge as he might deem suitable. The present episcopal visitations preserve the memorial, though not the form of these meetings.

Synods for spiritual purposes continued to be held

until the Act of submission put an end to them ; and they were distinct from the state convention both in their summons, and in their object. The one has often been confounded with the other, partly because, even before the Reformation, it sometimes happened that the Archbishop, in order to spare the clergy the inconvenience and expense of a second attendance, detained them by his own authority in convocation for spiritual objects, after the secular business had been concluded. But it is important to remember that the meeting held by command of the King for granting supplies, was in its nature different from that which was summoned by Metropolitans, or by Bishops of the diocese, for the discussion of ecclesiastical subjects.

In the reign of Henry the Eighth, Convocation became the only representative body of the English Church. As long as its state functions remained, that is, as long as the clergy regulated the taxation of their own property, it continued to meet regularly, though with some restrictions. But when in 1664 by agreement between Archbishop Sheldon and Lord Chancellor Clarendon this privilege was abandoned, and ecclesiastical estates became subject to the same burdens of taxation as other possessions, the character of Convocation was changed. Its original purpose was at an end, and it became in its objects what provincial synods had anciently been, although very different in its constitution. The system of representation which had reference to the payment of taxes, survived

the change, and still continues to give a place and a privilege to presbyters, which they did not previously possess. They were summoned to diocesan synods, and their attendance was enjoined under pain of suspension; but in the provincial council the case was different; the only necessary members being the Metropolitan and his suffragans; and it was the universal rule, not only in our own, but in other Churches of the West, that none of the lower clergy had the claim of attendance, except such as the Archbishop might please to call. The very form of citation which was used, proved sufficiently that their presence was not indispensable: they were to come "*si visum fuerit—si sua prospexerint interesse—si causas vel negotium habuerint,*" &c. The Archbishop had the right to summon the clergy, but they had no correspondent right, such as they now possess, by which they could claim to be summoned, until they obtained it through their attendance for the purpose of voting subsidies. Why the laity had no place in the English Convocation, is evident from the history of its origin. What the clergy did in their assemblies, was done by laymen in Parliament. Anciently they took part in Church legislation and government; and in the records of early synods their signatures stand beside those of ecclesiastics. What may be pleaded for the presence of the one, has similar application to the case of the other.

When Convocation was assembled, it formed one house, of which the Archbishop was, *de jure*, the

president ; although the lower clergy went apart from time to time for consultation, as the business in hand might require. By degrees they began to meet in a separate place, and for due order to be ruled by a prolocutor, called also referendarius, or organum cleri. Originally he was appointed only for the particular occasion, *ad hoc specialiter electus* ; but afterwards he was chosen at the first session, and, having been approved, he acted as moderator on all occasions. There were now two assemblies, meeting in different places, and yet they were contemplated as one body, acting under the government and direction of the Archbishop ; and this constitution remains to the present time. He has authority to continue or prorogue all meetings, to excuse attendance, to receive proxies, &c.

SECTION 3.

SINCE the act 25 Henry VIII. c. 19, Church Synods are restrained from assembling without the Royal consent. The restriction according to Lord Coke is as follows, “ It was resolved by the two chief justices and divers other justices at a committee before the Lords in Parliament, divers points concerning the authority of a Convocation. 1. That a Convocation cannot assemble at their Convocation without the assent of the King. 2. That after their assembly they cannot confer to constitute any canons without license

del' Roy. 3. When they upon conference, conclude any canons, yet they cannot execute any of their canons without Royal assent. 4. They cannot execute any after Royal assent, but with these four limitations ; 1. That they be not against the prerogative of the King, 2. nor against the common law, 3. nor against any statute law, 4. nor against any custom of the realm. And all this appears by the statute 25 Henry VIII. c. 19. And this was but an affirmance of what was before the said statute." *

In the words of Fuller the church historian, " Since this year from Archbishop Cranmer to Archbishop Laud all convocations (so long as they lasted) were born tongue-tied till the King did cut the string thereof with his letters patent, allowing them leave to debate on matters of religion, and therein what they conclude are arrows without piles, daggers without points, too blunt to pierce into the practice of others, but sharp enough to wound themselves, and bring them within the compass of a *præmunire*." †

When the Archbishop convenes the clergy by his mandate, he recites the Royal writ to show that the previous restraint is for the time taken off, and that they are at liberty to meet, although their meeting amounts to no more than a form, for they do not receive permission to proceed to the making of canons or any other ecclesiastical business.

* 12 Report, p. 72 : cited by Wake.

† Fuller, p. 191.

If the Convocation were again to become a reality, great changes in its constitution would be inevitable. There are at present imperfections and anomalies so obvious, that they could not be left without correction. The lay members of the Church, for instance, could not be any longer excluded ; in the functions which now belong to Convocation they are competent to take part, and their presence would be on all accounts indispensable.

But the proportion of representatives assigned to different bodies of the clergy would also need to be reconsidered. The chapters, which are reduced in numbers and importance, return many more proctors than the parishes. The franchise would require to be enlarged on the one side, and limited on the other. In the province of York, the Bishops and clergy meet and transact business as one house ; in the province of Canterbury they are distinct. The provinces are independent of each other, and no provision is made for their harmonious action. Canons have been passed in the Convocation of York, which were rejected in the Convocation of Canterbury ; and the former has sometimes accepted Canons of the latter without modification ; but there is no acknowledged superiority in the one over the other by which collision could be prevented if the occasion should arise. The election of proctors is not according to any universal rule, but differs essentially in different dioceses, and there is no Court provided for deciding upon the validity of returns when they are called in question,

which would probably be of frequent occurrence when subjects were in debate upon which wide difference of opinion exists. The Colonial Bishops and clergy are unrepresented, because, when Synods were in use, the claim of the Colonies to special provision had hardly been acknowledged; but so important a part of our communion could not be overlooked. The Irish Church, again, has no Convocation, though formerly its synods met in the four provinces. It is included in the legislation which affects the English Church; and they are virtually united, although the union has never been confirmed by any synodical act. The case could not be neglected, and it is full of difficulty. There are many other points which would claim consideration before Convocation could meet under the present circumstances of the Church, and not less are there questions of internal order and privilege which would be as needful and as difficult also to arrange, and on which as much difference of opinion and vehemence of debate would certainly arise. The changes required are organic; it is a work of reconstruction which would be before us, and these are hardly times in which it could be safely undertaken. Few churchmen would be willing to throw open the whole subject for debate in the House of Commons. Even if there were no hostility to dread, the very excitement of the time would be unfriendly to the task of framing a synodical power to which Church legislation and ultimate jurisdiction should be entrusted, and these are the functions which

are really claimed. No great constitutional changes are satisfactorily made, under the immediate pressure of a difficulty. Calm and deliberate judgment are indispensable to any good result.

SECTION 4.

WHETHER we ought to desire that the difficulties which lie in the way should be removed, and that Convocation should again assemble, must be determined by what we know of its history, during the period which intervened between the cessation of its secular functions, and its last meeting for actual business. We shall look in vain for anything to encourage us in expecting benefit from its revival, for it was during all those years, either useless or mischievous. Under Charles II. it was almost, and under James II. altogether, silent. In the reign of William and Mary it assembled, and, by a Commission issued in 1689, very important topics were proposed, such as "the making better provision for removing scandalous ministers, and for reformation of manners in ministers and people, and a stricter method for the examination of such persons as desire to be admitted into holy orders, both as to their learning and morals." Nothing could be more complete than the failure of any expectation which might have been formed of beneficial results, and that not from any hindrance *ab extra*, but from causes which operated, and would again operate, *ab*

intra. The interest of the Church itself made it unavoidable that Convocation should be dissolved soon after its re-opening.

In 1700 it was again convened, and for seventeen years it continued to hold its sessions. This was a time at which the state of public morals, as well as the progress of infidelity, urgently required the application of all remedies which could be employed. Subjects for deliberation connected with the state of religion and the wants of the Church were suggested by royal message, but without effect. Nothing was concluded, and no step taken of any practical advantage. The time was occupied in miserable disputes between the members of the two houses on questions of privilege, which, uninteresting as they may now seem, would inevitably be revived, and debated over again with the same violence if the opportunity occurred.* At a very early period, thirteen of the lower house entered a protest against the proceedings of their brethren. In 1702, the clergy proposed an application to the Queen for a commission to hear and decide these disputes, which the Bishops refused on account of the triumph which would be furnished to the enemies of the Church. In 1704, the lower house expressed sorrow that no benefit had resulted from their meeting, by reason of their dissensions. In 1705, all intercourse between the houses ceased, a

* Vid. Wilkins Dissert. de vet. et mod. Synodi Ang. Constit. p. vii.—xxvi.

protest was numerously signed by numbers of the lower house, and nearly half the entire number refused to take any part in its proceedings. A letter from the Queen to the Archbishop expressed her sorrow at these differences. In 1710, Kennet, who represented the moderate party, was proposed as prolocutor, but Atterbury was chosen; and when we consider his character, both political and religious, it may somewhat explain the tone which prevailed at that time. He was recommended to the notice of the University of Oxford on account of his book on Convocation, which contains more untenable propositions, and more undeniable mistakes, than could be easily found in any other work of a learned man.

The following years passed somewhat more quietly, but with hardly greater advantage, until in the year 1717, the violence with which the sermon of Bishop Hoadley was attacked, led to the dismissal of the Convocation. It is very inaccurate to represent this result as having been produced by the fidelity with which the clergy defended the soundness of Christian doctrine. In 1705, Hoadley had preached a sermon "on the measures of submission" against which objections were urged, not so much in respect to religious doctrine, as to opinions about civil government. But the contentions which had disgraced the Synod had begun years before. So again the second sermon which was censured, was preached in March of the very year in which Convocation was finally dissolved. Therefore with the strifes and scandals

which had made the suppression of these meetings inevitable, he had little to do. It can hardly be questioned that there were other causes, besides the laxity of theological opinions, to excite so much vehement opposition. Nearly seventeen years before, Burnet's exposition of the articles had been presented for censure ; but if the political opinions of the author had been less decided, his book would probably have escaped condemnation. Whoever considers the address to the Queen on her accession, in 1702, proposed by the lower house, or the representation on the state of the Church drawn up by Atterbury in 1710, will perceive how much political animosity was mingled in the disputes by which wise and good men were offended, and which made the suspension of synodical meetings a benefit. They are alluded to, rather than described by Wilkins, in true though melancholy words, "*Quæ contentiones, accrescente malitiâ, metropolitanum et suffraganeos exauctorare quærentes, tanta cum mordacitate protrahebantur, ut, pictorum instar, qui velo id obumbrant, quod penicillo exprimi haud decet, certaminis illius historiam, suppario silentii velatam, posteros celare malimus.*"* Who can wonder at the terms in which a profound statesman wrote on this subject at the close of the last century? "We know that the convocation of the clergy had formerly been called, and sat with nearly as much regularity to business as Parliament itself. It is now

* *Dedicat. Con. Mag. Brit.*

called for form only. It sits for the purpose of making some polite ecclesiastical compliments to the King; and when that grace is said, retires, and is heard of no more. It is, however, a part of the constitution, and may be called out into act and energy whenever there is occasion; and whenever those who conjure up that spirit will choose to abide the consequences. It is wise to permit its legal existence; it is much wiser to continue it a legal existence only.”*

SECTION 5.

THAT there is much to perplex and disquiet thoughtful minds, and that the Church is surrounded with difficulties, is not to be denied, the evidences are but too numerous; but that Convocation should therefore be convened is no legitimate conclusion: rather we may say that all past experience warns us against what would aggravate our present troubles to an indefinite extent. We are apt to take false measures of the evils which are before us, and of their remedy. Thus we read in a remarkable publication, which may be said to have opened this question at the close of the seventeenth century, “If ever there was need of a Convocation since Christianity was established in these kingdoms, there is need of it now.”† In

* Burke's Letter to the Sheriffs of Bristol, Works, iii. p. 181.

† Letter to a Convocation Man, concerning the Rights, Powers, and Privileges of that Body, 1696.

four years Convocation was assembled, and we all know how little good it accomplished during the period of its discreditable existence. The disputes which our forefathers maintained so keenly, those forgotten controversies about forms of procedure, and the mutual relation of the two houses, and the jurisdiction of the Archbishop might easily be revived. Differences of opinion also on things nonessential, instead of dying out, would be renewed from year to year, as each authoritative meeting of the clergy came round. And on whatever point issue might be joined, a contention would be inevitable between the parties whose existence cannot be overlooked. The one or the other might obtain a triumph, but it would be dearly bought. There are warnings enough from the history of other communions, as well as of our own.

The words of Archbishop Wake are very forcible, and not wanting in application to ourselves. "As there are many cases for which it would be improper to call a Convocation; so may there be some times too, in which it would be altogether unadvisable to assemble it. When men's passions are let loose, and their minds disordered; when their interests and designs, their friends and their parties; nay, their very judgments and principles lead them different ways; and they agree in nothing so much as in being very peevish and angry with one another; when their very reason is depraved, and they judge not according to truth or evidence, but with respect of persons;

and every one opposes what another of a different persuasion either moves or approves of: what good can the Prince propose to himself, or any wise man hope for, from any assembly that can be brought together, under the unhappy influence of these and the like prepossessions? It was the sense of this made a wise man in the last age tell Charles the Fifth, That it appeared by experience, and might from reason be demonstrated, that those affairs seldom succeeded well, which were to be done by many. And if such be the inconvenience to which number alone exposes such meetings in the best times, sure I am, both reason and experience will much more convince us that, in times of doubt and discontent, this will be more likely to be the case; and that, under such circumstances, there is little good to be expected from them.”*

The very violence with which some among us denounce the suppression of ecclesiastical assemblies, proves how far they are yet removed from the calm deliberate temper which could alone make the revival of them in any way useful. And if a clear practical argument were still wanting, it would be furnished by the self-constituted meetings of the clergy, which have borrowed much of the spirit of agitation by which the world is so greatly governed. They shew by many tokens what evils might be expected if Convocation were to become a reality; and how unfit we are at

* Rights of Princes, p. 316.

present for the functions which some of us are so eager to discharge. Nor can we overlook the danger which would be certainly incurred of hastening that separation between the spiritual and temporal powers, mutually necessary as they are, which wise men fear, and which good men pray God in His pity to avert.

Great subjects, in which the very integrity of the faith is involved, would necessarily come into debate, and with no previous assurance of fitness for discussing them, because the representatives of the Clergy in Convocation would have been selected on other considerations at least as much as this ; some for popular qualities, and some for strong party opinion. The scholar who lived among his books, or the man of moderation who stood aloof from controversy, would have little chance of being chosen. There would be instances without end of persons transferring the tone of the only meetings to which we have been of late accustomed, into this Church Council; laying broad conclusions on a narrow basis ; carrying out principles far beyond the point to which they are applicable ; taking limited and imperfect views of the subject in hand ; and, in their eagerness to press a particular opinion, forgetting all proportion and harmony of doctrine. In the mean while, however ill prepared the members of convocation might be by exact enquiry and patient study, for taking part in the settlement of profound questions, their voices would tell in the adoption of decrees which would necessarily involve the character of the

Church, and that not constructively and by implication, but directly and beyond denial. It is not thus that the correction of error and soundness in the faith are advanced, but often it is the very reverse; and men grow less open to conviction through the effect of an intellectual contest, in which the voice of conscience is not so easily heard. Truth comes into the heart by meditation and study and prayer, by holiness and self-denial and a Christ-like life. *Via Crucis, via lucis.* Even in ordinary times religion gains little by debate, while charity is sure to suffer: but in days like the present, any good result is impossible, while the mischief would be certain.

A season of change is ill chosen for modifying the standards of doctrine and rules of discipline, and changes such as have taken place among those who were leaders in existing controversies have been almost beyond precedent. One, and not the least eminent, wrote strongly and emphatically against the Church of Rome which he described as "crafty, obstinate, wilful, malicious, cruel, and unnatural," and while his followers were still pondering this heavy condemnation, and the clear arguments by which it was justified, he left them to become a teacher in the very communion which he had denounced; and now, in words strikingly eloquent and untrue, he details the blessings which Rome for ages poured upon this thankless people. Another published a careful and elaborate volume to prove that the jurisdiction assumed by the Roman See is nothing but an

usurpation, and two years later, having traversed the same ground, and handled the same authorities, he concludes that Scripture, and Councils, and the Fathers all attest the Supremacy of the See of St. Peter. And these are far from being the narrowest limits of time within which some of name and repute have travelled to the opposite poles of religious opinion and belief. In the interval between the foundation and the completion of a Church, there has been, in more than one case, opportunity enough to discover that the Communion, for whose service the holy work was begun, is no true member of the body of the faithful. A shorter space even than this has sufficed with some for the unspeakably important change, and within a few weeks they have gone from their ministrations among us, to denounce the Church in which they received their baptism and their orders, with that contemptuous bitterness which is the first lesson which converts learn from their new teachers. We may rejoice that some of the opinions which they expressed while they remained among us, carried no other weight than such as the personal character and ability of the writers could give them ; and that they could not, as representatives of the clergy in Convocation, inflict a deeper and more permanent injury. And for their own sake too we may be glad. If they should be brought back, by God's infinite grace and mercy, in penitence and tears, to the spiritual home which they have forsaken, it may somewhat comfort them to remember that they had no power to speak

as members of a Synod, against the Church, towards which their hearts were blinded and embittered. While these changes do little credit to the learning, or the stability of the age, they prove abundantly how ill chosen the time would be, for committing ourselves to fresh conclusions on the great subjects which are in question. Movement and disquietude and agitation are on all sides: the season for sound judgment comes later. In the mean while we may be thankful that the intervention of the Royal Supremacy so far from inflicting an injury, as it is alleged, has spared the Church a great and irreparable calamity.

SECTION 6.

BUT it is said that the obligation to hold Synods is paramount to any other consideration, because it was the rule and practice of the primitive Church. There is no doubt that they were commanded by ancient Councils, as well as by the highest civil authority,* and that they were held in England from a very early time. But what we require, is some evidence that this ecclesiastical law has a binding force at present, and that we are not at liberty to accommodate our practice to the different circumstances in which we find ourselves placed. Canons of discipline are not like articles of faith; they may be changed accord-

* Nov. 123. c. 10. Capit. Car. Mag. i. c. 13.

ing to the times. We are not bound, for instance, to stand at public prayer on the Lord's day, although the last of the Nicene canons commanded it. Councils themselves have, again and again, authorized great variations from previous rules, by which it has happened, in the words of St. Augustine, sæpe priora posterioribus emendari.* It is remarkable that the original direction in regard to Synods has hardly ever been observed. It is enjoined by the Apostolic code that they should be held twice a year, and the same by the Councils of Nice, Antioch, Chalcedon, &c. The rule is clear and explicit, yet the canon law directs that they should be convened once a year, which Lyndwood also gives as the rule of the Church.† The fourth Lateran Council directs once a year, the Council of Basil once in three years, the Council of Trent the same, and other Councils, which it is needless to cite, appoint different periods. The practice has varied as much as the rule. In England, provincial Synods were never held with regularity. Sometimes a period of many years elapsed in which none were summoned. In the Gallican Church, not one was held for a hundred years together. The injunction has been all but universally disregarded, it has been obeyed neither in the East, nor the West, which is primâ facie evidence that compliance has been found inexpedient; and those who now urge

* De Bapt. cont. Don. lib. 2, c. 3.

† Provinciale, lib. 1, tit. 14.

upon us the revival of what has so long fallen into disuse, are bound to furnish some reasons for an expectation of benefit at this time. Let us once more listen to the words of Archbishop Wake, "That Synods may, in some cases, be as useless to the Church, as in others they are expedient, every man's own reason will tell him: and that such times may happen in which they may be apt to prove not only useless but hurtful, we have not only the experience, but the complaints of the best men to convince us. It was a severe judgment which Gregory Nazianzen passed upon the Synods of his time; and it is the more to be regarded, because it was the result of a frequent trial, and a sad observation, that he fled all such assemblies, as having never seen any one of them come to a happy conclusion; or that did not cause more mischief, than it remedied. Their contention and ambition (says he) is not to be expressed: and a man may much easier fall into sin himself, by judging of other men, than he shall be able to reform their crimes.* There is scarce any thing in antiquity, that either more exposed our Christian profession heretofore, or may more deserve our serious consideration at this day, than the violence, the passion, the malice, the falseness, and the oppression which reigned in most of those Synods that were held by Constantine first, and after him, by the following Emperors, upon the occasion of the

* Epist. 42.

Arian controversy. Bitter are the complaints which we are told that great Emperor made of them. The barbarians, says he, in his letter to one of them, for fear of us, worship God : but we mind nothing but what tends to hatred, to dissension ; in one word, to the destruction of mankind. And what little success other Synods have oftentimes had, might easily be made appear ; were it needful to enlarge upon so known and melancholy a subject.”* It is undeniable that the disuse of Councils is to be ascribed originally to the influence of Rome. The testimony of De Marca is clear on this point, and it is supported by that of numerous writers of the same communion. “ *Cùm itaque summi Pontifices pertinaciter contendissent appellari posse ad sedem apostolicam, non solùm à sententiis definitivis, sed etiam ab instructione, ac hujusmodi appellationes reciperent, Episcopi omnem horum Conciliorum curam abjecerunt, quæ nihil aliud ipsis adferebant quàm sumptus et dedecus.*”†

In proportion as the authority of the Pope is enlarged, the very object for which Councils are called, is superseded. The ultramontane theory, which is fast drawing to itself the most able and active minds in the Roman communion, is unfavourable to the deliberation of Bishops and clergy on points of faith and discipline, since it is liable to

* Authority of Christian Princes, p. 306.

† Lib. vi. c. 15, s. 3.

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be over-ruled and neutralized by a jurisdiction which is final, and which virtually abrogates the law of Synods. The cause of Christianity loses nothing, indeed, by their suppression; it has suffered often by their meeting; and no part of ecclesiastical history is more perplexing and painful than that which contains their records. There are discordant decrees which no rule of interpretation can harmonize; and there are memorials of what cannot but have been injurious to religion itself, such as the bitter hatred which was mutually expressed by the fathers of Basil and Florence, or the corruptions and intrigues by which Trent was disgraced.

Rome is a bad refuge for those who are dissatisfied with the suspension of Church councils among ourselves, because its practice, as well as its dominant principle, is unfriendly to their use. And if the personal infallibility of one Bishop is to be taken as the adequate substitute, it is unavoidable to enquire what foundation there is for the claim, on which every thing is set at stake. It has been denied by the most distinguished Church in communion with Rome, for ages together. It has been rejected by Councils of Roman Bishops, whose decrees have the highest sanction and authentication. They affirmed distinctly, the superiority of a general Council, and that the Pope is amenable to its censures. To join the communion of Rome, through the attraction of a doctrine about which its own members have ever been divided, and which gets no countenance at all from antiquity,

is as inconsistent and unreasonable as to accept the interference of a foreign Bishop, which is strictly forbidden by the primitive rule, in order to escape from the Royal Supremacy, to which the saints of the early Church submitted without a murmur.

Meanwhile the issues which are involved are full of peril. We may leave the English Church because we are displeased with many things, but it is not at our pleasure that we can receive into our hearts the doctrines of another. Faith does not come at the call of anger, or discontent, or self-will. We may dislike the interposition of the supreme civil power in receiving appeals, in appointing Bishops, and in restraining synods, though with how little reason has been proved; but if the case of supposed hardship and wrong were tenfold stronger, it would leave the old unanswered objections against the Roman communion as valid as ever. Human thought is not to be suppressed by the profession of absolute and unlimited obedience. We cannot get rid of the responsibility of judging, which God has bound up with the very constitution of our minds. The satisfaction of escaping from an authority to which we do not like to submit, will not serve as a counterpoise to the burden of doubt, which calmer thoughts will bring with them; and misgivings will force themselves upon minds even the most unwilling to admit them. It is not a railing accusation which Rome has to answer, but the grave witness borne by history, by statute after statute in our own Parliament, long before the

Reformation, by Acts of Councils composed of its own members, and by the words of men who lived and died in its communion. And there is an accusing voice from the Low Countries, and from the mountains of Piedmont, from the streets of Paris, and from the dungeons of Seville, which cannot be silenced or shut out, by reiterating extravagant claims which few are able to define, and none successfully to defend.

When we determine to find elsewhere, that independence of the civil power which Christians, in ages wiser and better than our own, never desired to attain, we lay open our faith to a danger under which we can the less expect divine deliverance, because we bring it upon ourselves. The spirit of obedience, which is the great rule of holy living would be our chief safeguard.

Let us, in these days of estrangement and unthankfulness, cling all the closer to the communion in which we and our fathers have found so many blessings, and which has been evermore a refuge to the penitent and the broken-hearted, to the weary and the wandering and the lonely. And we need not fear that we shall perform our duty to the Church the less, because we render glad obedience to our Sovereign in things ecclesiastical. We have on our side the voice of Scripture, the example of primitive practice, and the words of pious and learned men in the earliest ages, as well as in our own.

ERRATA.

- Page 3, line 26, read "opinions."
23, line 21, read "Convocations."
27, line 15, read "plenissimam."
50, line 8, read "rights."
68, note, line 4, read "Sacerdotii."
70, line 5, read "Chalcedon."
124, last line, read "benefices."
127, line 17, read "a benefice."
133, note, last line, read "quin."
165, line 12, read "is to be."
173, line 20, read "opinions."
247, line 24, read "Hubert."

Works by the same Author.

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